

# THE PLIGHT OF BOLIVIAN COCA LEAVES: BOLIVIA'S QUEST FOR DECRIMINALIZATION IN THE FACE OF INCONSISTENT INTERNATIONAL LEGISLATION

## INTRODUCTION

On March 12, 2012, at a United Nations narcotics control summit in Vienna, Austria, a man held up a green leaf in front of representatives from fifty-three nations.<sup>1</sup> This man, Bolivian President Evo Morales, declared that his countrymen possessed an “ancestral right” to consume this particular leaf and downplayed the international concerns associated with it by displaying byproducts made from the leaf on the podium from which he was speaking.<sup>2</sup> The item at the center of attention at that moment, at the 55th session on the Commission on Narcotic Drugs, was the coca leaf, the main ingredient of the powerfully addictive drug, cocaine.<sup>3</sup> Because the coca leaf is the “natural form” of this notorious stimulant, coca leaf chewing was banned by the United Nations.<sup>4</sup> Morales attended the summit in order to plead with the attendees to accept coca leaf legalization, and to help him continue in the fight of illegal cultivation of these leaves.<sup>5</sup> “We are not drug addicts when we consume the coca leaf,” said Morales, before adding, “[t]he coca leaf is not cocaine, we have to get rid of this misconception.”<sup>6</sup>

This appearance before the delegates was not the first time Morales had given such a speech. Nearly three years earlier, at a United Nations summit on drugs, Morales “ate a coca leaf in front of [the] delegates” to emphasize that the leaf is not a harmful product and that it actually possesses many benefits to Bolivians.<sup>7</sup> During this performance, Morales attempted to accentuate that the international “ban on coca was a ‘major

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1. Fredrik Dahl, *Bolivia Defends Coca Consumption at U.N. Meeting*, REUTERS (Mar. 12, 2012, 2:34 PM), <http://www.reuters.com/article/2012/03/12/us-drugs-un-bolivia-idUSBRE82B0QH20120312>.

2. *Id.*

3. *Id.*

4. George Jahn, *Bolivia: Coca-Leaf Chewing Should Be Legalized*, HUFFINGTON POST (Mar. 12, 2012, 3:09 PM), [http://www.huffingtonpost.com/2012/03/12/bolivia-coca-leaf-chewing\\_n\\_1339801.html](http://www.huffingtonpost.com/2012/03/12/bolivia-coca-leaf-chewing_n_1339801.html).

5. *Id.*

6. Dahl, *supra* note 1.

7. Toby Green, *This is a Coca Leaf, Not Cocaine, Insists Morales*, INDEPENDENT (Mar. 12, 2009), <http://www.independent.co.uk/news/world/americas/this-is-a-coca-leaf-not-cocaine-insists-morales-1643098.html>.

historical mistake.”<sup>8</sup> At the time, Morales hoped that certain “similarities” between his rise to president, and that of United States President Barack Obama, would encourage President Obama to aid his cause.<sup>9</sup> Yet, the United States has historically been a staunch opponent towards any form of drug legalization and has been at the forefront of efforts to eradicate the coca leaf.<sup>10</sup> In fact, Bolivia has struggled for decades in its attempts to reconcile with the United Nations over the coca leaf issue. Recently, Morales’s efforts paid off when the United Nations announced on January 11, 2013, that it would tolerate traditional coca leaf chewing within Bolivia, which then rejoined an international treaty with a reservation.<sup>11</sup>

After Peru and Colombia, Bolivia is the world’s third-largest cultivator of coca and the third-largest producer of cocaine.<sup>12</sup> As a result of this notoriety, efforts led by the United States to forcefully eradicate Bolivia’s coca crops through legislation and anti-drug policies have been maintained over the years. Despite these efforts, the legislation and treaties that address this contentious issue are not aligned with one another in their

8. *Id.*

9. *Id.* Morales stated, “Before, nobody believed that an Indian could be president and nobody thought that a black man could be president of the United States.” *Id.* To clarify the point, Morales is an Aymara Indian, one of Bolivia’s indigenous people.

10. Human Rights Watch, *Bolivia Under Pressure: Human Rights Violations and Coca Eradication* (May 1, 1996), available at <http://www.hrw.org/reports/1996/Bolivia.htm>. Indeed, in its eradication efforts, the U.S. government has taken the approach of “no coca, no cocaine.” *Id.* at 4–5.

11. See William Neuman, *Bolivia: Morales Wins Victory as U.N. Agrees to Define Some Coca Use as Legal*, N.Y. TIMES (Jan. 11, 2013), [http://www.nytimes.com/2013/01/12/world/americas/bolivia-morales-wins-victory-as-un-agrees-to-define-some-coca-use-as-legal.html?\\_r=2&](http://www.nytimes.com/2013/01/12/world/americas/bolivia-morales-wins-victory-as-un-agrees-to-define-some-coca-use-as-legal.html?_r=2&).

12. *The World Factbook: Bolivia*, CIA (last updated March 11, 2014), <https://www.cia.gov/library/publications/the-world-factbook/geos/bl.html> [hereinafter *CIA Factbook—Bolivia*]. The country had “an estimated 30,000 hectares for cultivation in 2011,” and a “29 percent increase over 2010” in its amount of pure cocaine production in 2011. *Id.* A reason for Bolivia’s crusade to legalize the coca leaf and amend the Single Convention despite the fact that Peru and Colombia (which are also major producers of coca and signatories of the Single Convention) have not made such demands of the international community, may be that Bolivia’s economy (as per GDP) is much smaller than those of its South American neighbors. See JAMES PAINTER, *BOLIVIA AND COCA: A STUDY IN DEPENDENCY* 140 (1994). As a result, Bolivia may be more dependent on coca cultivation than Colombia and Peru and, consequently, any illicit drug trafficking revenue. Bolivia is a poor and underdeveloped nation. Its 2013 estimated GDP (purchasing power parity) was \$58.34 billion. See *CIA Factbook—Bolivia, supra*. In contrast, Colombia’s 2013 estimated GDP (purchasing power parity) was approximately \$526.5 billion. *The World Factbook: Colombia*, CIA (last updated Mar. 11, 2014), <https://www.cia.gov/library/publications/the-world-factbook/geos/co.html>. Peru’s 2012 estimated GDP (purchasing power parity), meanwhile, was \$344 billion. *The World Factbook: Peru*, CIA (last updated Mar. 11, 2014), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/pe.html>. Aside from economic differences between the countries, there is also a social difference. The coca leaf has “no legal status” and does not have a great “social role” in Colombia, whereas the coca leaf has a long tradition and is socially relevant in both Bolivia and Peru. See PATRICK L. CLAWSON AND RENSSLAER W. LEE III, *THE ANDEAN COCAINE INDUSTRY* 136 (1996).

substantive language, and at best, offer an ambiguous amalgam of verbiage that attempts to restrict coca leaf production and consumption.

After addressing the legislation relevant to this issue, this Note will encourage Bolivia to export its coca leaves for medical or scientific purposes and argue for export legalization of products legally derived from the leaves. Part One will discuss the importance of the coca leaf to Bolivia and give a brief background of the forced eradication and anti-drug efforts that Bolivia has faced. Part Two will explore the various relevant United Nations legislation, Bolivia's relevant domestic laws, and the troublesome conflicts these regulation attempts have presented. Part Three will briefly discuss the monist and dualist systems of international law, and how Bolivia's monist system approaches the coca leaf issue. Lastly, Part Four will propose a number of suggestions on how Bolivia could alternatively approach this dispute, how the United Nations could help disentangle the conflicting legislation, and ways that further coca leaf concessions could benefit Bolivia and the world while also potentially influencing other drug legislation.

#### I. THE COCA LEAF'S IMPORTANCE TO BOLIVIA AND THE WAR ON COCAINE

Coca leaves have been an important part of "Bolivia[n culture] since pre-Incaic times."<sup>13</sup> Bolivians chew coca leaves for a variety of reasons and use them for cooking, religious activities, and medicinally.<sup>14</sup> Bolivians maintain that the purported benefits of chewing coca leaves include "reduc[ing] hunger pangs," aiding digestion, and increasing strength and endurance, which is essential for working long hours at high altitudes and

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13. See Robert B. South, *Coca in Bolivia*, 67 GEOGRAPHICAL REV. 22 (1977). Evo Morales has stated "that the chewing of the coca leaf dates back to 3000 B.C." Steve Elliot, *Bolivia Set To Withdraw From U.N. Treaty Banning Drugs*, TOKE OF THE TOWN (June 24, 2011), [http://www.tokeofthetown.com/2011/06/bolivia\\_set\\_to\\_withdraw\\_from\\_un\\_treaty\\_banning\\_dru.php](http://www.tokeofthetown.com/2011/06/bolivia_set_to_withdraw_from_un_treaty_banning_dru.php).

14. See Elliot, *supra* note 13. More specifically, "[t]he leaves also can be boiled to make a tea or applied to wounds as a plaster." In addition, "Andean peasants use the leaves to make predictions and to diagnose illness." In fact, "[t]he leaf shapes, sizes, and manner of falling to the floor are believed to symbolize different spirits, parts of the body, and elements of nature." Douglas H. Boucher, *Cocaine and the Coca Plant: Traditional and Illegal Uses*, 41 BIOSCIENCE 72 (1991). The religious purpose of coca leaves has been corroborated by researchers, such as Dr. Tom Dillehay of Vanderbilt University, who has said, "Some have argued that (coca chewing) is a fairly recent historical tradition—meaning the last several centuries or a thousand years—but it's a deeply-rooted economic, social and even religious tradition in the Andes." Jason Palmer, *Coca Leaves First Chewed 8,000 Years Ago, Says Research*, BBC NEWS (Dec. 1, 2010), available at <http://www.bbc.co.uk/news/science-environment-11878241>.

in cold weather.<sup>15</sup> Coca leaf chewing is a common activity for some Bolivians, akin to the “coffee break or tea time of other cultures.”<sup>16</sup> In fact, coca leaf chewing is quite similar to how people chew tobacco.<sup>17</sup> In Bolivia, coca was traditionally cultivated on the steep, elevated slopes of the Yungas region of the Andes Mountains.<sup>18</sup> But cultivation of the crop is now mainly done in the “lower-elevation [of] Chapare Valley.”<sup>19</sup>

Coca leaves contain alkaloids, which are chemicals in plants that contribute to many well-known flavors.<sup>20</sup> The most concentrated alkaloid in coca is cocaine.<sup>21</sup> Because the coca leaf serves as the base for cocaine, the international community has taken steps to curb its production. Despite the fact that the effects of cocaine are not very potent when coca leaves are chewed,<sup>22</sup> the United States government has aggressively pressured Bolivia to eradicate its coca since the mid-1990s. These efforts have led to strong resistance from coca growers, known as *cocaleros*, and have even been met with violent outbursts in the Chapare region where many of the

15. See Boucher, *supra* note 14, at 72.

16. South, *supra* note 13, at 22. As a social practice, when friends and visitors are around, people say, “Come round for a chew of coca.” Alison L. Spedding, *The Coca Field as a Total Social Fact*, in COCA, COCAINE, AND THE BOLIVIAN REALITY 69 (Madeline Barbara Leons & Harry Sanabria eds., 1997). Additionally, Spedding states that the chewing of coca leaves also occurs at festivals and parties, “where it provides an excellent accompaniment to drinks and cigarettes and ameliorates the often fatal effects of cane-alcohol cocktails and home brewed maize beer.” *Id.*

17. South, *supra* note 13, at 22. The process of chewing the coca leaf is as follows:

The chewer takes a few leaves from a small pouch, usually removes the midribs, and places the leaves in his or her mouth, between the gum and cheek, until a quid is formed. Quids are occasionally replenished with new leaves as part of masticated leaves mixed with saliva are swallowed. The effects of chewing can purportedly be enhanced by adding an alkaline substance to the quid, and in Bolivia an ash (*legia*) is used. A chew will commonly last two or three hours, and when it is finished it is spat out.

*Id.* When the coca is combined with ash or even chalk, the substances help dissolve the alkaloids of the coca into the saliva. See Boucher, *supra* note 14, at 72.

18. Boucher, *supra* note 14, at 72. The Yungas, more specifically, is “the subtropical zone, between 600 and 2,000 meters lying to the east of the eastern Andean mountain chain.” Spedding, *supra* note 16, at 48. The region in question refers to the two most populous Yungas areas, the Nor and Sud Yungas provinces. *Id.* Because the region consists of “extremely steep, narrow valleys[,] . . . agriculture is [difficult and] very labor-intensive,” but the coca leaves grown there are “of very good quality.” *Id.* at 51. The Bolivian government has marked some parts of the region for “traditional cultivation” of the leaves, which means that there is no forced eradication there. *Id.* While there are other products produced in the region, such as coffee and fruits, coca is harvested throughout the year and is the primary product. *Id.* at 52.

19. Boucher, *supra* note 14, at 72.

20. *Id.*

21. *Id.* See also Palmer, *supra* note 14.

22. Boucher, *supra* note 14, at 75. Boucher notes that “[c]oca leaves are only approximately 1% cocaine and contain several other alkaloids and compounds that modify the cocaine’s effects.” *Id.* He adds, “The drug is released slowly over several hours, does not reach the brain for approximately 15 minutes, and has a mild effect.” *Id.*

coca farmers are poor.<sup>23</sup> The Bolivian legislation *Ley del Regimen de la Coca y Sustancias Controladas*, more popularly known as Law 1008, has been in effect since 1988 and regulates the amount of coca that can be cultivated in Bolivia.<sup>24</sup> The law limits the licit amount of coca to be grown in the Yungas area to 12,000 hectares, asserts that the coca grown in the Chapare region is not necessary to meet the demand for traditional use, and calls for the gradual eradication of this excess coca.<sup>25</sup> While the Bolivian government has compensated coca growers for voluntary eradication in the past, it switched to forcible destruction of seedbeds and newly planted coca crops without giving compensation.<sup>26</sup> Though the farmers contended that they are right to defend their livelihood, the Bolivian government insisted that national interest demands forcible

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23. Human Rights Watch, *supra* note 10, at 2.

24. *Bolivia Background Note*, U.S. DEP'T OF STATE (Mar. 8, 2012), <http://www.state.gov/outofdate/bgn/bolivia/199005.htm>.

25. *Id.* Article 10 of Law 1008 “calls for the eradication of at least 5,000 hectares annually but conditions reaching this goal on ‘the availability of financial resources from the national budget as well as by the commitments and provision of sufficient bilateral and multilateral technical and financial cooperation destined for Alternative Development.’” Human Rights Watch, *supra* note 10, at 25 n.4. This eradication is a forced one, without compensation in regards to existing cultivation, and lies outside the traditional areas and transitional areas that Law 1008 has delineated. *See* Painter, *supra* note 12, at 80.

26. Human Rights Watch, *supra* note 10, at 25 n.6. As such, there have been reports of human rights abuses by Bolivian counternarcotics forces funded by the United States. In fact, both Bolivian and United States officials admit that there are problems with Law 1008, but state that legislative reform would cause even more problems. HUMAN RIGHTS WATCH, *BOLIVIA: HUMAN RIGHTS VIOLATIONS AND THE WAR ON DRUGS* (1995), available at <http://www.unhcr.org/refworld/country,,hrw,countryrep,bol,,3ae6a7e64,0.html>. Moreover, “Law 1008 has been superimposed on an extremely weak judiciary, which although declared independent in the Bolivian constitution, is in fact highly susceptible to outside pressure, particularly from the executive branch.” Additionally, “[i]t has a reputation for being highly politicized, corrupt, and slow with the abuse, coercion, and extortion of prisoners routine occurrences (Gamarrá 1991).” Linda Farthing, *Social Impacts Associated with Antidrug Law 1008*, in *COCA, COCAINE, AND THE BOLIVIAN REALITY*, *supra* note 16, at 253, 254. What is more, with regards to Law 1008, Title I of the law deals with coca eradication, and Title II “set[s] up the judicial framework for dealing with ‘controlled substances’ in a form so draconian that its application, as Farthing’s chapter demonstrates, has drawn accusations of human rights violations.” Madeline Barbara Leons & Harry Sanabria, *Coca and Cocaine in Bolivia: Reality and Policy Illusion*, in *COCA, COCAINE, AND THE BOLIVIAN REALITY*, *supra* note 16, at 1, 22. Law 1008 set up “special drug courts [with national jurisdiction], drug prosecutors, and [an] anti-drug police force.” Farthing, *supra*, at 256. It restricts “the rights of the accused to defense (Article 108) and denies provisional liberty or bail (Article 109), which has meant that all those accused of drug related crimes, whether innocent or guilty, remain in detention while awaiting trial.” Farthing, *supra*, at 257. As to the punishments and penalties outlined under Law 1008, they are very severe “and disproportional to” those penalties administered for other crimes committed under the country’s penal code, as those convicted under this law are “not eligible for amnesty, commutation of sentence, or pardon, options recognized under Bolivian law for all other crimes.” *Id.* at 258–59.

eradication and have accused the coca growers union of being manipulated by drug traffickers.<sup>27</sup>

Juan Evo Morales, an Aymara Indian and head of the local coca growers union of the Chapare region,<sup>28</sup> was elected to the Bolivian presidency in 2006. The Aymara are the indigenous people of Bolivia, who have traditionally consumed and used the coca leaf. During his tenure, Morales has departed from the policy of “forced eradication,” while increasing efforts to fight cocaine traffickers and directing “record seizures of cocaine.”<sup>29</sup> In addition, Morales has fought to legalize coca leaf chewing in the face of its ban by the United Nations and has taken steps to inform the world of the inconsistent legislation surrounding the coca leaf issue.

## II. LEGISLATION RELEVANT TO THE COCA-LEAF ISSUE

### A. *United Nations Treaties and Declarations*

#### 1. *The Single Convention on Narcotic Drugs, 1961*

The main legislation that Bolivia has opposed is the United Nations Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs, 1961 (the “Single Convention”).<sup>30</sup> Bolivia believes that the coca leaf is unduly deemed to be a narcotic by the Single Convention, which classified it as a Schedule I drug along with cocaine.<sup>31</sup> The Single Convention is an international treaty that restricts the cultivation, possession, and distribution of specified substances that are categorized by Schedules, except for medical and scientific purposes.<sup>32</sup> Articles 26 and 27 of the Single Convention discuss the coca bush and the coca leaf. Article 26,

27. Farthing, *supra* note 26, at 258–59.

28. *Bolivia to Withdraw From U.N. Drug Convention*, FOX NEWS LATINO (June 23, 2011), <http://latino.foxnews.com/latino/news/2011/06/23/bolivia-to-withdraw-from-un-drug-convention/>.

29. *Id.*

30. U.N. ESCOR Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961, Mar. 24, 1972, 976 U.N.T.S. 3 [hereinafter Single Convention].

31. See INTERNATIONAL NARCOTICS CONTROL BOARD, YELLOW LIST: LIST OF NARCOTIC DRUGS UNDER INTERNATIONAL CONTROL 3 (2011), available at [http://www.incb.org/documents/Narcotic-Drugs/Yellow\\_List/NAR\\_2011\\_YellowList\\_50edition\\_EN.pdf](http://www.incb.org/documents/Narcotic-Drugs/Yellow_List/NAR_2011_YellowList_50edition_EN.pdf).

32. Single Convention, *supra* note 30. More specifically, article 4, section C states that member nations shall take necessary measures “[s]ubject to the provisions of this Convention, to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs.” *Id.*

paragraph 1, applies the provisions relating to the cultivation of opium poppy as laid out in article 23, and article 26, paragraph 2, calls for the destruction of “coca bushes if illegally cultivated.”<sup>33</sup> In addition, article 27, paragraph 1, allows for coca leaf use when preparing a flavoring agent that does not contain alkaloids.<sup>34</sup> Bolivia specifically took issue with Article 49, paragraph 1, section C, which temporarily permits coca leaf chewing, as well as Article 49, paragraph 2, section E, which calls for the abolishment of coca leaf chewing within twenty-five years after the Single Convention has come into force.<sup>35</sup> Because the Single Convention entered into force on December 13, 1964, coca leaf chewing should have been abolished in December 1989.<sup>36</sup> Nonetheless, because coca leaf chewing still continues in Bolivia, Bolivia has been violating its international obligation as to this treaty.

## 2. *The 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*

Bolivia attempted to mitigate what it deemed to be the harsh verbiage of the Single Convention by making a reservation to the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the “1988 Convention”).<sup>37</sup> In an unprecedented

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33. *Id.* art. 26. If a Party to the Single Convention permits the cultivation of the opium poppy, it must establish at least one government agency to designate areas for licensed cultivation and to take physical possession of the crop and head its distribution. *Id.* art. 23.

34. *Id.* art. 27.

35. *Id.* art. 49. Article 41, paragraph 2 states: “In respect of any other State depositing an instrument of ratification or accession after the date of deposit of the said fortieth instrument [in paragraph 1], this Convention shall come into force on the thirtieth day after the deposit by that State of its instrument of ratification or accession.” *Id.* Article 41, paragraph 1 states: “This Convention shall come into force on the thirtieth day following the date on which the fortieth instrument of ratification or accession is deposited in accordance with article 40.” *Id.* The date of deposit of the fortieth instrument was on November 13, 1964, which means that the period for coca leaf chewing under the Convention ended on December 12, 1989. See TRANSNATIONAL INSTITUTE, COCA CHEWING OUT OF THE UN CONVENTION? (2010), available at [http://www.druglawreform.info/images/stories/documents/Amendment\\_coca\\_leaf\\_chewing.pdf](http://www.druglawreform.info/images/stories/documents/Amendment_coca_leaf_chewing.pdf).

36. Single Convention, *supra* note 30. A depository notification from the U.N. Secretary-General regarding a letter from President Evo Morales has a different take on when coca leaf chewing should have been abolished under the Single Convention. Morales states that because Bolivia ratified the Single Convention on September 23, 1976, it entered into force in that country on October 23, 1976, and, thus, coca leaf chewing should have been abolished in 2001. U.N. Secretary-General, Depository Notification dated Mar. 12, 2009, Bolivia: Proposal of Amendments by Bolivia to Article 49, Paragraphs 1(c) and 2(e), at 4 (Apr. 6, 2009) [hereinafter Proposal of Amendments]. However, this appears to be an incorrect interpretation of article 49, and coca-leaf chewing should have been abolished in 1989 under the language of the Single Convention.

37. United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, Dec. 20, 1988, 1582 U.N.T.S. 95 [hereinafter 1988 Convention].

stance, this Convention required its Parties to criminalize possession for personal consumption.<sup>38</sup> Bolivia signed and confirmed but made a reservation to the Convention,<sup>39</sup> asserting that certain provisions in the 1988 Convention did not apply to the country and notably taking issue with the criminalization of the coca leaf.<sup>40</sup> While the 1988 Convention provides that any measures adopted to eradicate illicit coca must respect human rights and the traditional usage of the coca leaf, it also states (interestingly within the same Article) that countries that do take such measures must still abide by the provisions outlined in the Single Convention.<sup>41</sup> In other words, Bolivia can permit the traditional use of coca leaf since there is evidence that the indigenous peoples have historically used it, but must adhere to the standard set by the original language of the 1961 Single Convention, which mandated the eradication of all coca leaf chewing by 1989. As such, not only was there a

38. *Id.* at 3. See also HEATHER J. HAASE, NICOLAS EDWARD EYLE, & JOSHUA RAYMOND SCHRIMPF, NEW YORK CITY BAR ASSOCIATION COMMITTEE ON DRUGS & THE LAW, THE INTERNATIONAL DRUG CONTROL TREATIES: HOW IMPORTANT ARE THEY TO U.S. DRUG REFORM? 2 (2012), available at <http://www2.nycbar.org/pdf/InternationalDrugControlTreatiesArticle.pdf>.

39. 1988 Convention, *supra* note 37, at 12. Bolivia made its reservation to article 3, paragraph 2, which states:

Subject to its constitutional principles and the basic concepts of its legal system, each Party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law, when committed intentionally, the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention.

*Id.*

40. 1988 Convention, *supra* note 37. The country “declares the inapplicability to Bolivia of those provisions of that paragraph which could be interpreted as establishing as a criminal offence the use, consumption, possession, purchase or cultivation of the coca leaf for personal consumption.” U.N. SECRETARY-GENERAL, MULTILATERAL TREATIES DEPOSITED WITH THE SECRETARY-GENERAL, ch. VI-19, 4–5, available at <https://treaties.un.org/doc/Publication/MTDGS/Volume%20I/Chapter%20VI/VI-19.en.pdf> [hereinafter MTDGS].

41. 1988 Convention, *supra* note 37, art. 14. Article 14, paragraph 2 provides:

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.

*Id.* In the same article, in paragraph 1, it provides:

Any measures taken pursuant to this Convention by Parties shall not be less stringent than the provisions applicable to the eradication of illicit cultivation of plants containing narcotic and psychotropic substances and to the elimination of illicit demand for narcotic drugs and psychotropic substances under the provisions of the 1961 Convention, the 1961 Convention as amended and the 1971 Convention.

*Id.* In addition, Article 25 of the 1988 Convention asserts that, “[t]he provisions of this Convention shall not derogate from any rights enjoyed or obligations undertaken by Parties to this Convention under the 1961 Convention, the 1961 Convention as amended and the 1971 Convention.” *Id.* art. 25.



contradiction between the two Conventions, but an inherent contradiction also existed within the same article in the 1988 Convention. Among the chief considerations Bolivia noted in making its reservation to the pertinent portion of the 1988 Convention is that if the language spelled out in article 14 is followed, many Bolivians would be considered criminals under the Convention.<sup>42</sup> As such, Bolivia deemed inapplicable that portion of the 1988 Convention.

### 3. *Declaration on the Rights of Indigenous Peoples*

Matters were further complicated by the existence of an important and relevant United Nations resolution, the United Nations Declaration on the Rights of Indigenous Peoples, which was adopted by the United Nations General Assembly in 2007.<sup>43</sup> Several of its articles establish important rights to indigenous peoples, such as the right “to practise and revitalize their cultural traditions and customs,”<sup>44</sup> “the right to their traditional medicines and to maintain their health practices,”<sup>45</sup> and “the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions.”<sup>46</sup> The declaration also provides that States must compensate indigenous peoples for “cultural, intellectual, religious and spiritual property” taken without their “free,

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42. MTDSG, *supra* note 40, at 4–5. Specifically, the country stated: “The coca leaf is widely used and consumed in Bolivia, with the result that, if such an interpretation of the above-mentioned paragraph [Article 3, paragraph 2] was accepted, a large part of Bolivia’s population could be considered criminals and punished as such, such an interpretation is therefore inapplicable.” *Id.* at 5.

43. United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007) [hereinafter Declaration on the Rights of Indigenous Peoples]. While the Declaration is universally adopted and considered important, it is not legally binding, as the General Assembly of the United Nations is “not a law-making body.” See 69 INT’L L., HOT TOPICS: LEGAL ISSUES IN PLAIN LANGUAGE 1 (2009), available at [www.legalanswers.sl.nsw.gov.au/hot\\_topics/pdf/international\\_69.pdf](http://www.legalanswers.sl.nsw.gov.au/hot_topics/pdf/international_69.pdf). The General Assembly of the United Nations was “empowered by the United Nations Charter to ‘initiate studies and make recommendations for the purpose of promoting international cooperation in the political field and encouraging the progressive development of international law and its codification.’” MARK W. JANIS, AN INTRODUCTION TO INTERNATIONAL LAW 50–51 (4th ed. 2003). In regards to the legal effect of resolutions, Janis adds that “[r]esolutions” and recommendations of these international organizations can be regarded as “soft law,” which consists of “‘rules which are neither strictly binding nor completely void of any legal significance’” and that may “harden” into customary international law. *Id.* at 52–53.

44. Declaration on the Rights of Indigenous Peoples, *supra* note 43, art. 11. Article 11, paragraph 1 states: “Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.” *Id.*

45. *Id.* art. 24.

46. *Id.* art. 31.

prior and informed consent.”<sup>47</sup> Bolivia was the first country to implement this resolution into their domestic legal system, as the Declaration was adopted as Law No. 3760 in 2007, and eventually into Bolivia’s own Constitution in 2009.<sup>48</sup> To the extent that it applies to Bolivia, coca leaf chewing is a custom that is part of Bolivia’s cultural heritage, and it is also used as a traditional medicine. In effect, Bolivia found a universally adopted international instrument that it could use to defend its long-standing practice against the Conventions.

### *B. Bolivia’s Domestic Laws*

Not only could Bolivia look to the United Nations Declaration on the Rights of Indigenous Peoples to support its cause, it could also look to its own Constitution. While the aforementioned Law 1008 is an anti-drug law that is troublesome to Bolivia, the country’s most recent Constitution came into force on February 7, 2009.<sup>49</sup> Among the new additions to the Constitution is a section devoted to coca under Article 384, which calls native coca a “cultural patrimony” and asserts that natural coca is not a narcotic.<sup>50</sup> This section is a direct incorporation of the Articles referring to cultural heritage and customs in the Declaration on the Rights of Indigenous Peoples.<sup>51</sup> By asserting that coca in its natural state is not a narcotic, Bolivia is distinguishing the coca leaf from cocaine, as it believes the Single Convention has failed to do.

The coca leaf itself only contains about one percent cocaine in its pure alkaloid form, and “large quantities of the coca leaf are needed for [actual] cocaine production” as an illicit drug.<sup>52</sup> Additionally, the cocaine alkaloid

47. Declaration on the Rights of Indigenous Peoples, *supra* note 43, art. 11(2)

48. EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES, IMPLEMENTATION OF THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES: POSITIVE INITIATIVES AND SERIOUS CONCERNS ¶ 17 (2009), *available at* [http://www.ubcic.bc.ca/files/UNDRIP\\_ExpertMechanismJointStatement\\_081109.doc](http://www.ubcic.bc.ca/files/UNDRIP_ExpertMechanismJointStatement_081109.doc).

49. Constitución Política del Estado de Bolivia [C.P.], *available at* <http://pdba.georgetown.edu/Constitutions/Bolivia/bolivia09.html>.

50. C.P., art. 384. Article 384 states: “El Estado protege a la coca originaria y ancestral como patrimonio cultural, recurso natural renovable de la biodiversidad de Bolivia, y como factor de cohesión social; en su estado natural no es estupefaciente. La revalorización, producción, comercialización e industrialización se regirá mediante la ley.” (translated, “The State protects the original and ancestral coca leaf as a cultural patrimony, a renewable natural resource of Bolivia’s biodiversity, and a factor of social unity; in its natural state it is not a narcotic. Its production, marketing and processing will be controlled by law.”) *Id.*

51. Declaration on the Rights of Indigenous Peoples, *supra* note 43, arts. 11, 24, 31.

52. *See* Boucher, *supra* note 14, at 75. *See also* South, *supra* note 13, at 25. The first step in actually producing cocaine is to extract the alkaloids from the coca leaves by taking large quantities, about 250 to 300 pounds, of the leaves and mixing them with kerosene and water to produce coca

in the coca leaf could be viewed similarly to the nicotine alkaloid found in tobacco, and the caffeine alkaloid that is found in many varieties of plants.<sup>53</sup> Neither the tobacco plant nor other plants that contain caffeine are deemed as narcotics.<sup>54</sup> Similarly, as Evo Morales argues, the coca leaf itself should not be deemed a narcotic.<sup>55</sup>

Moreover, the Constitution is in stark contrast to Law 1008, which aims to regulate and eradicate coca cultivation and makes no reference to any cultural rights belonging to the indigenous people. Indeed, the Bolivian government has been formulating various laws that would replace Law 1008 due to the conflicting language in the Constitution.<sup>56</sup>

### *C. The Conflict Between Bolivia's Own Laws and Its International Obligations to the United Nations*

#### *1. Principles of International Law*

Bolivia is legally bound to its obligations under the Conventions, as it is also a party to the 1969 Vienna Convention on the Law of Treaties that was entered into force on January 27, 1980.<sup>57</sup> Under Articles 26 and 27 of the Vienna Convention, Bolivia must adhere to the provisions of the

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sulfate. *Id.* at 28. Everything in the solution is drained off, and what remains is dried to produce coca sulfate paste. *Id.* The next major step is to process the paste into base, as the paste is mixed with acid solution and potassium permanganate, and the liquid is then drained. "The resulting powder is a cocaine base." See CLAWSON & LEE III, *supra* note 12, at 246. Cocaine base is then refined "into cocaine hydrochloride powder" in labs by adding hydrochloric acid diluted that makes the cocaine crystallize, which has a much higher purity "and can reach the brain within minutes after it has been snorted." Boucher, *supra* note 14, at 74. See also CLAWSON & LEE III, *supra* note 12, at 246. Powder cocaine in its pure form that is mixed and heated by the distributor (not the user) becomes crack in the form of small chunks or "rocks" and "reaches the brain in . . . seconds." Boucher, *supra* note 14, at 74–75. As such, there is a complicated process in producing the highly refined cocaine drug, and it should be differentiated from the natural coca leaf that has a very small amount of cocaine and is arguably not a powerful drug in and of itself.

53. Evo Morales Ayma, Op-Ed., *Let Me Chew My Coca Leaves*, N.Y. TIMES (Mar. 13, 2009), <http://www.nytimes.com/2009/03/14/opinion/14morales.html>.

54. *Id.*

55. *Id.*

56. *Bolivia to Update Anti-Drug Law*, FORUM OF THE AMERICAS: DIÁLOGO (June 12, 2011), [http://www.dialogo-americas.com/en\\_GB/articles/rmisa/features/regional\\_news/2011/12/06/feature-ex-2710](http://www.dialogo-americas.com/en_GB/articles/rmisa/features/regional_news/2011/12/06/feature-ex-2710). Senator Eugenio Rojas of the MAS party delineated the two laws, saying, "One will be a law dealing with this traditional plant, and the other will sanction drug trafficking." *Id.* Additionally, Law 1008 is ineffective due to the controversy surrounding its enforcement policies, corruption, and lack of justice, and it should be reformed nonetheless.

57. Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331. Although the Vienna Convention defines its scope in article 1 as being limited to treaties between States, article 5 states: "The present Convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization." *Id.* art. 5.

Convention and cannot use its domestic law as an excuse to not fulfill treaty obligations.<sup>58</sup> Article 26 is the *pacta sunt servanda* provision, establishing that, “[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith.”<sup>59</sup> This provision has been defined as “perhaps the most important principle of international law.”<sup>60</sup> Under this principle, Bolivia must honor the Single Convention and abide by its provisions.

There are, however, certain exceptions to the *pacta sunt servanda* provision. In light of article 27 of the Vienna Convention, an exception exists in article 46 of the same Convention that “allows states to invoke national rules that invalidate the instrument of ratification of an international treaty, but only if the rule concerned is of crucial importance to the domestic legal order.”<sup>61</sup> Article 384 of Bolivia’s 2009 Constitution is a national rule that was presumably invoked with the relevant language of the Single Convention in mind, but it is not clear if it is of “crucial importance” to Bolivia’s legal system to invalidate the nation’s ratification of the Single Convention. Additionally, another customary law exception known as the *rebus sic stantibus* principle “allows states to invalidate international obligations if circumstances change and the meaning of those international obligations have lost their rationale.”<sup>62</sup> This principle is outlined in article 62 of the Vienna Convention, and one of its conditions is that the circumstances be unforeseen, which does not apply in Bolivia’s situation. Bolivia’s main concern with the Single Convention is that it was a “historical error”<sup>63</sup> to ratify the treaty while it contained the offensive verbiage. Unlike the United States, a generally dualist country where international law *may* be incorporated into domestic law with the consent of the President and the Senate,<sup>64</sup> Bolivia is a monist country.<sup>65</sup> As such,

58. *Id.* arts. 26–27.

59. *Id.*

60. THOMAS BUERGENTHAL & SEAN D. MURPHY, *International Law of Treaties*, in PUBLIC INTERNATIONAL LAW IN A NUTSHELL 119 (4th ed. 2007).

61. Fisnik Korenica & Dren Doli, *The Relationship Between International Treaties and Domestic Law: A View from Albanian Constitutional Law and Practice*, 24 PACE INT’L L. REV. 92, 115 (2012).

62. *Id.*

63. Geoffrey Ramsey, *Bolivia Opts Not to Destroy Coca as Morales Defends Drug Policy*, INSIGHT CRIME: ORGANIZED CRIME IN THE AMERICAS (Mar. 14, 2012), available at <http://www.insightcrime.org/news-briefs/bolivia-opts-not-to-destroy-coca-as-morales-defends-drug-policy>.

64. John F. Coyle, *Incorporative Statutes and the Borrowed Treaty Rule*, 50 VA. J. INT’L L. 655, 656–57 (2010). See also Alan O. Sykes, *International Law*, in I HANDBOOK OF LAW & ECONOMICS, 780 (A. Mitchell Polinsky & Steven Shavell eds., 2007) (noting that the United States is a dualist state).

65. John L. Hammond, *Indigenous Community Justice in the Bolivian Constitution of 2009*, 33 HUM. RTS. Q. 649, 671 (2011) (stating that “[l]egal monism . . . has ‘long prevailed in Bolivia’”).

Bolivia treats international law and domestic law as being part of the same legal system, and therefore, international law enters the domestic law realm and is enforceable without any action needed by domestic actors.<sup>66</sup>

## 2. *Bolivia's Proposed Amendments*

On March 12, 2009, Bolivia proposed amendments to the 1961 Single Convention, in accordance with article 47 of the Convention (as relating to making amendments),<sup>67</sup> requesting that article 49, paragraphs 1(c) and 2(e), be deleted from the Convention. Bolivia's proposal maintained that, "[t]he objective of the Single Convention on Narcotic Drugs of 1961 is to control drug abuse, not to prohibit 'habits' or sociocultural practices that do not harm human health."<sup>68</sup> In particular, Bolivia stated that article 49 violated the United Nations Declaration on the Rights of Indigenous Peoples, among other conventions and agreements.<sup>69</sup> Despite Bolivia's efforts, seventeen member Parties objected, due to concern that passage of the amendment could compromise the integrity of the Convention and encourage future Parties to take similar measures.<sup>70</sup>

66. See Coyle, *supra* note 64, at 656. See also Hammond, *supra* note 65.

67. Single Convention, *supra* note 30, art. 47. Article 47, paragraph 1, holds that "Any party may propose an amendment to this Convention." *Id.* Article 47, paragraph 2, determines that any proposed amendment considered by the Parties for acceptance which "has not been rejected by any Party" during an eighteen-month period will "enter into force." But if any Party rejects the proposal, "a conference shall be called to consider such amendment." *Id.*

68. Proposal of Amendments, *supra* note 36, at 5. In asserting that the coca leaf does not have deleterious health effects, Bolivia's proposal states: "Even the report of the Commission of Enquiry on the Coca Leaf of May 1950, which served as the basis for the 1961 Convention, states that 'it does not . . . appear that the chewing of the coca leaf can be regarded as a drug addiction in the medical sense'" (quoting Report of the Commission of Enquiry on the Coca Leaf (May 1950)). *Id.* It also adds, "The report considers coca leaf chewing to be a 'habit.'" *Id.* Furthermore, Bolivia adds:

Coca leaf chewing does not harm human health in any way; nor does it give rise to any kind of complication or addiction. Chewing coca is not the same as consuming cocaine. The cocaine alkaloid that makes up less than 0.8 per cent of the coca leaf and is ingested orally through chewing is not stable in an acidic environment like the stomach and is hydrolyzed there (quoting Roderick E. Burchard and Nieschulz in the study "Coca sagrada o ilegal") (trans. "Coca sacred or illegal").

*Id.*

69. TRANSNATIONAL INSTITUTE, *supra* note 35, at 1. Bolivia also stated that the Single Convention violated:

[T]he International Covenant on Economic, Social and Cultural Rights, Convention No. 169 of the International Labour Organization (ILO), the Universal Declaration on Cultural Diversity, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions and the proclamation by the United Nations Educational, Scientific and Cultural Organization [(UNESCO)] of the cosmivision of the Kallawayaya people as a masterpiece of the oral and intangible heritage of humanity.

Proposal of Amendments, *supra* note 36, at 5.

70. Press Release, Press Conference on Bolivia's Proposed Amendment to 1961 Narcotic Drugs

### 3. *Bolivia's Withdrawal from and Re-Accession to the Single Convention*

Having failed in its earlier efforts, on June 29, 2011, Bolivia submitted an instrument of denunciation of the Single Convention, which took effect on January 1, 2012, as permitted under article 46 of the Single Convention.<sup>71</sup> On December 29, 2011, Bolivia submitted an instrument of accession from the Single Convention and a reservation in accordance with article 50,<sup>72</sup> asserting that the Single Convention's abolition mandate of coca leaf chewing is "incompatible with article 384 of the Constitution of Bolivia," and that "Bolivia must reconcile its international obligations with its Constitution."<sup>73</sup> After removing itself from the Single Convention, Bolivia was required to wait a year for re-admittance, and if one-third of the member Parties to the Single Convention objected, it could not be readmitted with its reservation.<sup>74</sup> In July 2012, the United States, as expected, objected to the proposed reservation, stating its concern that the allowance of such a reservation would lead to more coca and, thus, more

Convention (June 24, 2011), [http://www.un.org/News/briefings/docs/2011/110624\\_Bolivia.doc.htm](http://www.un.org/News/briefings/docs/2011/110624_Bolivia.doc.htm). In fact, "[m]any of the States parties indicated that they had no objections to coca leaf chewing, per se, which they recognized as an age-old practice of indigenous peoples; however, they could not agree to Bolivia's amendment because of the risk it would jeopardize the Convention's integrity." *Id.* UNODC chief Yuri Federov has noted, he is against "Bolivia's attempt to exempt traditional uses of coca from the convention, saying 'such kinds of initiatives in the long run may undermine' international consensus on drug control and 'have a domino effect.'" Jahn, *supra* note 4.

71. U.N. Secretary-General, Depositary Notification, Single Convention on Narcotic Drugs, 1961, Bolivia (Plurinational State of): Denunciation, U.N. Doc. CN.421.2011.TREATIES-26 (June 30, 2011). Article 46 of the Single Convention states that any Party can denounce this Convention by an instrument in writing deposited with the Secretary-General, and that the "denunciation, if received by the Secretary-General on or before the first day of July in any year, shall take effect on the first day of January in the succeeding year." Single Convention, *supra* note 30, art. 46.

72. U.N. Secretary-General, Depositary Notification, Bolivia (Plurinational State of): Communication, U.N. Doc. C.N.829.2011.TREATIES-28 (Dec. 29, 2011) [hereinafter Communication]. The text of the reservation is as follows:

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. At the same time, the Republic of Bolivia will continue to take all necessary legal measures to control the illicit cultivation of coca in order to prevent its abuse and the illicit production of the narcotic drugs which may be extracted from the leaf. The effective accession of Bolivia to the aforementioned convention is subject to the authorization of this reservation.

*Id.* Article 50, paragraph 3, of the Single Convention outlines that a State that wants to become a member to the Single Convention but be able to make reservations other than those outlined in the treaty can do so, but if one-third of the other members of the Convention object to the reservation within one year, then the reservation will not be permitted. Single Convention, *supra* note 30, art. 50.

73. Communication, *supra* note 72, at 5.

74. Single Convention, *supra* note 30, art. 50.

cocaine and drug trafficking.<sup>75</sup> Despite the objection, only fifteen countries out of the sixty-two required for blockage objected to the reservation.<sup>76</sup> Subsequently, on January 11, 2013, the United Nations declared that Bolivia would be re-admitted to the Single Convention with a special dispensation that coca leaf chewing for traditional purposes is legal in Bolivia, thus exempting the nation from the ban.<sup>77</sup> Consequently, Bolivia was able to reconcile its Constitution with its international obligations under the Single Convention.

### III. MONIST AND DUALIST LEGAL SYSTEMS: BOLIVIA AS A MONIST SYSTEM

Bolivia's legal system has been described as a "civil law system with influences from Roman, Spanish, canon (religious), French, and indigenous law."<sup>78</sup> Public international law consists of concepts of monist and dualist legal systems in countries. In a monist system, "a ratified international treaty forms part of the domestic legal order and is directly incorporated and often directly applied at the national level."<sup>79</sup> On the other hand, a dualist system "views international law and domestic law as two independent legal orders" and requires acts of incorporation for international law to apply to a country's laws.<sup>80</sup>

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75. U.N. Secretary-General, Depositary Notification, United States of America: Objection to the Reservation Contained in the Communication by the Plurinational State of Bolivia, U.N. Doc. C.N.361.2012.TREATIES-VI.18 (July 10, 2012).

76. *See Bolivia Achieves Coca-chewing Victory at United Nations*, BBC (Jan. 11, 2013), <http://www.bbc.co.uk/news/world-latin-america-20994392>. The fifteen countries that objected were "the United States, Mexico, Japan, Russia, Canada, the United Kingdom, Germany, France, Italy, the Netherlands, Sweden, Finland, Portugal, Israel, and Ireland." *Id.*

77. *Id.* Bolivia officially returned to the Single Convention on February 10, 2013. *Major Victory for President Morales: UN Accepts "Coca Leaf Chewing" in Bolivia*, MERCOPRESS (Jan. 14, 2013, 6:38 UTC), <http://en.mercopress.com/2013/01/14/major-victory-for-president-morales-un-accepts-coca-leaf-chewing-in-bolivia>.

78. *CIA Factbook—Bolivia*, *supra* note 12.

79. Korenica & Doli, *supra* note 61, at 94.

80. *Id.* Korenica and Doli state: "Dualist models of the relationship between international law and domestic law propose that a treaty takes effect internationally after being signed by the head of state, but in order for it to have sway over domestic legal affairs, the treaty's text must be adopted through a law of parliament." *Id.* *See also* BRINDUSA MARIAN, *THE DUALIST AND MONIST THEORIES: INTERNATIONAL LAW'S COMPREHENSION OF THESE THEORIES* (2007), available at [http://revcurentjur.ro/arhiva/attachments\\_200712/recjurid071\\_22F.pdf](http://revcurentjur.ro/arhiva/attachments_200712/recjurid071_22F.pdf). (Special thanks to Tove Klovning of Washington University School of Law for her assistance in finding this article.) Harold Hongju Koh, former Legal Adviser of the Department of State and former dean of Yale Law School, also defined a "monistic" system as "international and domestic law together constituted a unified legal system, with domestic institutions acting as important interpreters and enforcers of international legal norms." Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106 *YALE L.J.* 2601, 2605 (1997).

Bolivia adheres to the monist conception, and thus, an international agreement needs to be ratified by statute in order for it to enter into force.<sup>81</sup> The delegation of the Plurinational State of Bolivia in its opening statement to the 2010 Convention on the Rights of the Child explained to the Committee that “international instruments ratified by Bolivia took precedence over domestic law.”<sup>82</sup> As a result, as long as it remains a Party to the Single Convention, Bolivia is bound by its duties set forth in the treaty that takes precedence over its Constitution. This could explain why Bolivia’s Constitution allowed for a four-year period for the nation to reconcile itself with conflicting international agreements.<sup>83</sup>

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81. See Hammond, *supra* note 65. See also THE PLURINATIONAL STATE OF BOLIVIA: EMBASSY OF THE HAGUE, INFORMATION ON THE PLAN OF ACTION FOR ACHIEVING UNIVERSALITY AND FULL IMPLEMENTATION OF THE ROME STATUTE (2013), available at <http://212.159.242.181/NR/rdonlyres/9A7562A4-9BB5-4ACA-92F2-FEB7BFE7FE3B/284024/ICCASP10POA2011BOLENG.pdf>. See also UNITED NATIONS OFFICE ON DRUGS AND CRIME, MANUAL ON INTERNATIONAL COOPERATION IN CRIMINAL MATTERS RELATED TO TERRORISM 8 n.12 (2009), available at [https://www.unodc.org/tldb/pdf/Manual\\_on\\_Intl\\_Cooperation\\_in\\_Criminal\\_Matters.pdf](https://www.unodc.org/tldb/pdf/Manual_on_Intl_Cooperation_in_Criminal_Matters.pdf).

82. Comm. on the Rights of the Child, Summary record of the 1432d meeting, Consideration of reports of States Parties: Fourth periodic report of the Plurinational State of Bolivia on the Implementation of the Convention on the Rights of the Child, ¶ 12 Sept. 17, 2009, U.N. Doc. CRC/C/SR.1432. Paragraph 38 of this report also sheds light on the supremacy of international law over Bolivia’s domestic law in stating that “article 13 of the Constitution clearly established that international human rights instruments ratified by the State party took precedence over domestic legislation, and that they were directly applicable.” *Id.* ¶ 38. By accepting and ratifying an international treaty, a country “assumes the duty to harmonize its domestic legislation with the norms of the Convention.” Carlos Jose Gutierrez, *Conflicts Between Domestic and International Law*, 30 AM. U. L. REV. 147, 150 (1981). Furthermore, Harold Koh indicates that through a transnational legal process of “this repeated cycle of interaction, interpretation, and internalization” and the avoidance of frictions, nations come to “obey” and comply with “international law out of perceived self-interest.” Koh, *supra* note 80, at 2655. Mark W. Janis also adds: “As the Permanent Court of International Justice explained in the Greco-Bulgarian Communities case: ‘It is a generally accepted principle of international law that in the relations between Powers who are contracting Parties to a treaty, the provisions of municipal law cannot prevail over those of the treaty.’ As we have seen above, a similar rule is found in the Vienna Convention.” JANIS, *supra* note 43, at 85–86. As such, “a nation may not usually interpose in international law its own law as a justification for failing to comply with an otherwise binding treaty obligation.” *Id.* at 92. Hence, Bolivia cannot point to its own Constitution and say that it will no longer honor its obligations in accordance with the Single Convention.

83. See *Bolivia Withdraws from the UN Single Convention on Narcotic Drugs*, WASHINGTON OFFICE ON LATIN AMERICA (June 30, 2011), [http://www.wola.org/news/bolivia\\_withdraws\\_from\\_the\\_un\\_single\\_convention\\_on\\_narcotic\\_drugs](http://www.wola.org/news/bolivia_withdraws_from_the_un_single_convention_on_narcotic_drugs).



#### IV. THE UNITED NATIONS SHOULD MAKE MORE ALLOWANCES FOR THE COCA LEAF

##### A. *Further Legalization of the Coca Leaf*

The United Nations should allow more coca leaf exceptions by accepting more coca leaf-related reservations to the Single Convention. Not only would international law fall in line with the indigenous rights recognized by the 2007 United Nations Declaration on the Rights of Indigenous Peoples, as well as Bolivia's own Constitution, but the coca leaf itself would not be completely banned to the rest of the world. Bolivia successfully made a reservation to article 49 of the Single Convention regarding the abolishment of coca leaf chewing within twenty-five years, but the international community should explore possible legalization of coca leaf chewing for all member Parties.

It seems that the international community desires eradication of all coca leaves, which would certainly undermine the illicit cocaine drug trade, but that option is not possible under current international legislation. Such a policy is not feasible to the Bolivian government because at least some coca leaves need to be available for its indigenous people to enjoy their cultural traditions, and also for medicinal purposes, as explicitly stated by the United Nations. For political reasons, the United States should be concerned with excess and illegal coca leaves, not all coca. Although the United States reasonably argues that coca leaf production is directly proportional to the supply of cocaine, forced total eradication of the crop will only conjure feelings of animosity and anti-Americanism among Bolivians.<sup>84</sup>

To Bolivia's credit, it appears that Morales has been doing his part to back his claims that he is fighting the illicit drug trade in spite of his pleas for legalization of the coca leaf. In March 2012, Morales told the 55th Session of the Commission on Narcotic Drugs that his country has set aside \$20 million to fight cocaine trafficking.<sup>85</sup> In addition, Bolivia signed an agreement with the United States and Brazil in 2012, where the United

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84. Boucher, *supra* note 14, at 76. "Cutting and burning the plantations, spraying herbicides, and other violent means of eradication have led to conflicts with the peasants and encouraged the growth of the *Sendero Luminoso* (Shining Path) guerillas in the Huallaga Valley in Peru." *Id.* Other eradication methods that have been employed have been direct attacks by Peruvian police on the seedbeds and biological warfare (including caterpillars). *Id.*

85. Marilia Brocchetto, *Bolivia's Morales to UN: Legalize Coca-leaf Chewing*, CNN (Mar. 13, 2012), [http://articles.cnn.com/2012-03-13/americas/world\\_americas\\_bolivia-morales-coca\\_1\\_coca-leaf-raw-ingredient-bolivia-s-morales?\\_s=PM:AMERICAS](http://articles.cnn.com/2012-03-13/americas/world_americas_bolivia-morales-coca_1_coca-leaf-raw-ingredient-bolivia-s-morales?_s=PM:AMERICAS).

States and Brazil are to “provide technical assistance’ in the fight against drug trafficking, “including satellite monitoring.”<sup>86</sup>

Despite the fact that Morales “kicked out the [United States] Drug Enforcement Administration [(DEA)] in 2009,” recent reports suggest that Bolivia is indeed effectively fighting against drug trafficking by controlling the growth of coca plots.<sup>87</sup> By using high-tech surveillance on legal coca plots, requiring the registration of coca growers, and regulating coca growers unions, Bolivia has seen a drop in total coca plantings in 2012, even amidst the United States’ concern that “the amount of cocaine that could potentially be produced from the coca grown in Bolivia” increased.<sup>88</sup> For coca plantings currently existing in the Chapare region (where the alkaloid content in coca leaves is stronger),<sup>89</sup> the Bolivian government could initiate programs to ensure that excess coca leaves are not being used for cocaine trafficking, but instead to make products such as tea. While finding alternative crops for the poor coca growers to produce instead of coca has been difficult, Bolivia and the international community can continue to work together to find solutions.

86. *Bolivia Signs Anti-drug Deal with US and Brazil*, BBC (Jan. 20, 2012), <http://www.bbc.co.uk/news/world-latin-america-16663728>.

87. William Neuman, *Coca Licensing Is a Weapon in Bolivia’s Drug War*, N.Y. TIMES (Dec. 26, 2012), [http://www.nytimes.com/2012/12/27/world/americas/bolivia-reduces-coca-plantings-by-licensing-plots.html?pagewanted=all&\\_r=2&](http://www.nytimes.com/2012/12/27/world/americas/bolivia-reduces-coca-plantings-by-licensing-plots.html?pagewanted=all&_r=2&).

88. *Id.*

89. *See* South, *supra* note 13, at 25. Concerning coca cultivation in the Chapare region, an argument has been made that there are environmental problems associated with coca leaf production in the more level area, as the soils there are deficient in nutrients, making “the development of any permanent agricultural system difficult.” Hans Salm & Maximo Liberman, *Environmental Problems of Coca Cultivation*, in COCA, COCAINE, AND THE BOLIVIAN REALITY, *supra* note 16, at 212. Continuation of coca cultivation on lands cleared of forest in the Chapare region can lead to environmental damage and erosion due to the disposal of chemicals during the processing of cocaine paste. *Id.* In fact, the soil in the Chapare is “poorly suited for crop production due to low nutrient content, elevated acidity, and high levels of aluminum toxicity.” *Id.* at 220. On the other hand, coca cultivation in the Chapare is a commodity because of coca’s resistance to flooding, which is common in the region because of heavy rainfall. *Id.* at 221. The Chapare is one of the wettest areas on the planet with an annual rainfall ranging between 2,700 and 4,900 millimeters. Painter, *supra* note 12, at 8. In that case, other alternative crops, such as plantains, maize, and peanuts, do not survive as well as the coca plant (due to its “elaborate root system”). *Id.* Yet these environmental concerns speak to the notion that production of coca leaf may be more beneficial to the country if limited to the Yungas, where soil erosion and loss of nutrients is not as problematic due to the terracing system of the coca fields there on the steep hillsides. As such, since the Bolivian government has declared the Yungas to be an area of traditional coca leaf cultivation, shifting the cultivation of coca in the Chapare (where forced eradication has been taking place) to the Yungas would be a more environmentally sound move for the country. In addition, such a move would make sense because, according to “some estimates, more than 90 percent of the coca [grown] in Chapare” winds up in drug production. *See* Neuman, *supra* note 87.

Additionally, while the coca leaf itself is arguably not the same as cocaine, removing it from the Schedule I list of drugs may be too drastic of a measure at this time, given the fact that Bolivia's stance on coca leaves is so far apart from that of its opposing Parties to the Single Convention. Complete legalization of the coca leaf will arguably lead to more cultivation of the leaves, resulting in more than what will be necessary for traditional use, as well as for medical and scientific purposes. This would likely be unacceptable to Bolivia's critics in the international community, especially in light of results released in November 2013 for a European Union-funded study by the Bolivian government, which shows that fifty-eight percent of the country's coca is devoted to traditional use and the rest is processed into cocaine.<sup>90</sup> Instead, Bolivia should be encouraged to export coca leaves strictly for medical and scientific purposes (which the language of the Single Convention allows in Article 4)<sup>91</sup> so as to have the international community verify its purported health and medicinal benefits.

Additionally, Bolivia should be allowed to export legal products made from the leaf, such as coca tea. Bolivia itself should amend or repeal its controversial law, Law 1008, as planned. It should continue to allow cultivation of the coca leaf in restricted areas (back to the Yungas where the alkaloids are not as strong, which means less extractable cocaine), but increase the current number of 12,000 hectares that can be used for production in that region.<sup>92</sup> Bolivia should further cut back on forced eradication in the Chapare region so as not to cause social friction, but still criminalize illicit trafficking and possession. Because the coca leaf is still a scheduled drug, its use is restricted to medical, scientific, and now

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90. Carlos Valdez, *Bolivia Says Most of Its Coca For Traditional Uses*, ASSOCIATED PRESS (Nov. 13, 2013, 5:09 PM), [http://www.apnewsarchive.com/2013/Bolivia%3A\\_Less\\_than\\_half\\_its\\_coca\\_goes\\_to\\_cocaine/id-5bd5a73e6afd4529aff949a90901e0cc](http://www.apnewsarchive.com/2013/Bolivia%3A_Less_than_half_its_coca_goes_to_cocaine/id-5bd5a73e6afd4529aff949a90901e0cc). If more coca is cultivated via complete legalization of the coca leaf, it reasonably follows that more coca would likely be processed into cocaine. "[I]n 2012, Bolivia had 25,300 hectares of [cultivated] coca," which is "more than double than the 12,000 hectares" authorized under Law 1008. Patricia Rey Mallen, *Bolivia's Coca Crops Surpass Legitimate Demand Needs; EU Fears Excess Cultivation for Cocaine Production*, INT'L BUS. TIMES (Nov. 16, 2013 11:38 AM), <http://www.ibtimes.com/bolivias-coca-crops-surpass-legitimate-demand-needs-eu-fears-excess-cultivation-cocaine-production>. "Bolivia's opposition legislators [notably] claim that only 6,000 hectares are needed . . . for legal uses." *Id.* Accordingly, completely decriminalizing the coca leaf does not appear to be the best option at this point, and smaller steps to elicit concessions from the international community may be more suitable.

91. Single Convention, *supra* note 30, art. 4. Article 4 states that "the production, manufacture, export, import, distribution of, trade in, use and possession of drugs" are to be "limit[ed] exclusively to medical and scientific purposes" (emphasis added). *Id.*

92. The leader of the coca growers union has estimated that the area needed to cultivate the annual demand for coca is 14,705 hectares. Mallen, *supra* note 90.

traditional purposes within Bolivia. Making an exception for the exportation of its legal derivatives would allow for its commercialization on the open market.

Finally, Bolivia could look to the poppy straw decision by the World Health Organization in 2001, which opted not to recommend critical review for the substance, as an example of what the country can further propose.<sup>93</sup> As Martin Jelsma notes, the International Narcotics Control Board had argued that poppy straw could be converted into “concentrate of poppy straw,” and then into popular products like codeine and morphine, but the World Health Organization stated that “the poppy straw extracts that are actually abused are already controlled under the 1961 Convention.”<sup>94</sup> As a result, poppy straw itself is not a scheduled substance, but concentrate of poppy straw is listed as a Schedule I drug in the Single Convention.<sup>95</sup> When poppy straw is crushed and mixed with extracting liquids, it produces concentrate of poppy straw containing more morphine concentration than poppy straw.<sup>96</sup> As such, the coca leaf is to poppy straw as coca paste is to concentrate of poppy straw, since coca paste results from mixing coca leaves with water and kerosene and then draining the solution.<sup>97</sup> Accordingly, it has been reasonably suggested that “coca paste” or “concentrate of coca leaf” should be scheduled under the Single Convention instead of “coca leaf” because the leaf itself does not constitute a step in the actual process of producing cocaine (like coca paste or cocaine hydrochloride powder).<sup>98</sup>

93. Martin Jelsma, *Sending the Wrong Message: The INCB and the Un-scheduling of the Coca Leaf*, TRANSNATIONAL INSTITUTE DRUG POLICY BRIEFING No. 21 (Mar. 2007), available at <http://www.druglawreform.info/images/stories/documents/brief21.pdf>. Jelsma is a political scientist who specializes in Latin America and international drug policy. *Martin Jelsma*, TRANSNATIONAL INSTITUTE, <http://www.tni.org/users/martin-jelsma>.

94. Jelsma, *supra* note 93, at 3.

95. *Id.* See also Single Convention, *supra* note 30. Article 1, paragraph 1(r) defines “[p]oppy straw” as “all parts (except the seeds) of the opium poppy, after mowing.” *Id.* art. 1. “Concentrate of poppy straw” is defined in the Single Convention’s Schedule I drug list as “the material arising when poppy straw has entered into a process for the concentration of its alkaloids when such material is made available in trade.” *Id.* This definition is similar to that of coca paste, which is the material arising out of the process of coca leaf for the concentration of the cocaine alkaloid.

96. See Istvan Bayer, *Manufacture of Alkaloids From the Poppy Plant in Hungary*, UNITED NATIONS OFFICE ON DRUGS AND CRIME, [http://www.unodc.org/unodc/en/data-and-analysis/bulletin/bulletin\\_1961-01-01\\_1\\_page005.html#s150](http://www.unodc.org/unodc/en/data-and-analysis/bulletin/bulletin_1961-01-01_1_page005.html#s150) (last visited Feb. 17, 2013).

97. Jelsma, *supra* note 93, at 3. See also South, *supra* note 13, at 28.

98. Jelsma, *supra* note 93, at 3.

*B. Allowing More Exceptions for the Coca Leaf May Bring Economic Benefits to Bolivia and to the Global Market*

Further exceptions for the coca leaf would also help stimulate Bolivia's economy. Many products can be made from the coca leaf, such as coca tea, energy drinks, and toothpaste.<sup>99</sup> One such product is Coca Colla, an energy drink that uses coca leaf extract as its base and that trades off the name of Coca-Cola, the popular U.S. soft drink that was believed to have originally used the coca alkaloid that was removed in 1903.<sup>100</sup>

While traditional coca leaf chewing has been recognized by the United Nations, there is still a strict ban on coca leaf exports from Bolivia.<sup>101</sup> If further studies can be conducted by the international community to verify the beneficial uses of the coca leaf, and if the nations recognize the legitimate purposes and benefits that the coca leaf can provide, it could open the door for these products to be exported worldwide, ultimately benefitting Bolivia's economy.<sup>102</sup> As coca tea may also prove to be a

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99. Sara Shahriari, *Coca Toothpaste? Bolivia Tries to Drum Up Demand for 'Legal' Coca Products*, CHRISTIAN SCI. MONITOR (June 3, 2013), <http://www.csmonitor.com/layout/set/r14/World/Americas/2013/0603/Coca-toothpaste-Bolivia-tries-to-drum-up-demand-for-legal-coca-products>.

100. Rory Carroll, *Coca Colla: The New "Real Thing" in Bolivia*, GUARDIAN (April 14, 2010 2:23 PM), <http://www.guardian.co.uk/world/2010/apr/14/coca-colla-real-thing-bolivia>; see also *Coke's Original Recipe Reportedly Found: Was It More, Or Less, Healthy? And Was There Really Cocaine in It?*, HUFFINGTON POST (Feb. 15, 2011 5:22 PM), [www.huffingtonpost.com/2011/02/15/coke-recipe-found\\_n\\_823552.html](http://www.huffingtonpost.com/2011/02/15/coke-recipe-found_n_823552.html). James Painter states that the Coca-Cola Company still buys coca from Bolivia to be used as flavoring in its product. Painter, *supra* note 12, at 2. Similar to the Coca Colla product, in 2008, the Austrian company that owns the energy drink Red Bull marketed a soda called Red Bull Cola. Due to German officials finding traces of cocaine in the product, however, the drink was prohibited in 2009 until it was eventually put back on sale when officials declared it safe. See Jean Friedman-Rudvosky, *Red Bull's New Cola: A Kick From Cocaine?*, TIME (May 25, 2009), <http://www.time.com/time/world/article/0,8599,1900849,00.html>. The 0.13 micrograms of cocaine found per can was not a serious health concern (as one would have to drink 12,000 liters of the product for that to occur), and Red Bull maintained that it used only de-cocainized extracts of coca leaf. *Id.* Fritz Soergel of the Institute for Biomedical and Pharmaceutical Research in Nuremberg, added, "There is no scientific basis for this ban on Red Bull Cola because the levels of cocaine found are so small. . . . And it's not even cocaine itself. According to the tests we carried out, it's a nonactive degradation product with no effect on the body." *Id.* As such, if Red Bull Cola is sold on the open market, Bolivia should be allowed to export its Coca Colla product to be sold in the world economy as well.

101. *No Need to Celebrate Anything, the UN Denies Possibility of Exporting Coca*, BOLIVIAN THOUGHTS IN AN EMERGING WORLD (Jan. 17, 2013), <http://bolivianthoughts.com/2013/01/17/no-need-to-celebrate-anything-the-un-denies-possibility-of-exporting-coca/>. Cesar Guedes, the representative of the U.N. Office for the control of drugs and crime prevention (UNODC), emphasized that Bolivia's re-accession to the Single Convention "does not mean the legalization of the coca leaf, at all (because this product) remains in the list of controlled substances." *Id.* So, only the practice of chewing coca leaves within Bolivia's borders is decriminalized by international legislation, but exports of the product to other countries (presumably for personal use) is still forbidden.

102. Dan Keane, *Scientists Study Coca's Possible Medical Benefits*, USA TODAY (Mar. 7, 2007), [http://usatoday30.usatoday.com/tech/science/discoveries/2007-03-07-coca-benefits\\_N.htm](http://usatoday30.usatoday.com/tech/science/discoveries/2007-03-07-coca-benefits_N.htm).

popular product, coca tea should be produced much like decaffeinated coffee, in that it should not be cocainized, so as to take precautionary measures to ensure the byproduct does not contain too much of the cocaine alkaloid.<sup>103</sup>

Critics may point to the existence of alternative crops to substitute for coca cultivation.<sup>104</sup> Yet, there are various problems associated with these alternative crops, particularly those grown in the Chapare region. One benefit to cultivating coca is that it yields four crops per year and the crop is easy to pack and transport.<sup>105</sup> But other crops, such as rice, bananas, and cassava, can spoil easily and are more difficult to transport to markets.<sup>106</sup> The focus, therefore, should not rest only on finding specific alternative crops that the farmers could grow and profit from, but rather should also be geared towards finding ways to move the processing of coca away from drug trafficking by using the crop itself for other beneficial products, as Morales and advocates of coca-leaf chewing have demonstrated.<sup>107</sup>

Additionally, programs could be established to help the thousands of farmers who may be suspected of aiding in the processing and trafficking of coca leaves into cocaine, to find other forms of employment in producing these alternative products that can be made from the coca leaf.<sup>108</sup> Yet, that does not mean that Bolivia should give up finding good, viable alternative crops for its economy. One such alternative crop-turned-

103. See Amanda J. Jenkins, Teobaldo Llosa, Ivan Montoya, & Edward J. Cone, *Identification and Quantitation of Alkaloids in Coca Tea*, 77 FORENSIC SCI. INT'L 179, 188 (1996). This study found that the average Bolivian coca tea bag contained 0.82 grams of coca leaf and prepared Bolivian tea contained 4.29 milligrams of cocaine. *Id.* at 179, 183. However, the authors cautioned that those who consumed this kind of coca tea may test positive for a urine drug test for cocaine. *Id.* at 188.

104. Painter, *supra* note 12, at 8.

105. *Id.* at 12.

106. *Id.* at 13. Specifically, due to the lack of storage options for rice, it has to be quickly transported to markets, and the transportation costs are not cheap. *Id.* Cassava is also costly to transport and does not yield as much crop as coca, which can be cultivated year-round. *Id.* Likewise, transportation costs for bananas are high, and they are easily perishable. *Id.* Simply put, coca is a commodity that can be easy to produce due to the environment and easier to market than other available crops.

107. Bolivia, however, has struggled to find a consistent market for some of these coca-based products other than coca tea, which is popular. Paola Flores, *Bolivia Encourages Coca Consumption, Not Cocaine*, HUFFINGTONPOST (May 8, 2013, 8:42 PM), [http://www.huffingtonpost.com/2013/05/08/bolivian-coca\\_n\\_3240175.html?view=screen](http://www.huffingtonpost.com/2013/05/08/bolivian-coca_n_3240175.html?view=screen).

108. Painter, *supra* note 12, at 12, 40. As Painter notes, farmers who plant the crops are not the only ones who may be complicit in the coca-cocaine economy. Individuals mainly involved in this economy include: “*propietarios* (owners of a plot of land), *partidarios* (farmers who do not own land, but who make deals with propietarios to work part of their land), *jornaleros* (day laborers), *pisacocos* or *pisadores* (stompers), *zepe(dore)s* (carriers), *compradores* (buyers of coca), and various types of *comerciantes* (buyers of coca paste, suppliers of chemical inputs, and owners of transport).” *Id.* at 40. As such, all of these individuals would have to be considered in analyzing employment options for processing coca leaf into non-drug related products.

product that has shown some promise is specialty coffee from the high-altitude Yungas region.<sup>109</sup> Even so, there is likely no single alternative crop that can compete one-on-one with the results that coca cultivation can bring. But a combination of crops like those mentioned with rewards programs for gradual voluntary eradication of coca plots, and producing and marketing everyday legal coca products could help the country approach sustainable revenue. Moreover, the Bolivian government should consider ways to improve housing, education, and health in the Chapare region and other regions with people who are dependent on coca leaf growing for their livelihood, and may be doing so only out of necessity and their impoverished state.<sup>110</sup>

*C. Further Actions Taken with the Coca Leaf May Spur Legalization Efforts of Another Banned Substance*

Parties to the Conventions have staunchly objected to Bolivia's repeated requests to amend the Single Convention. Perhaps a strong fear of what could possibly happen regarding other drug laws is behind other Parties' hesitance to sympathize with Bolivia's long-standing requests for legalization of the coca leaf. A concern may be that Bolivia's withdrawal and re-accession to the Single Convention may open the door for a similar stance by other countries. Bolivia's South American neighbor, Uruguay, legalized marijuana entirely from cultivation to consumption on December

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109. Jean Friedman-Rudovsky, *Bolivian Buzz: Coca Farmers Switch to Coffee Beans*, TIME (Feb. 29, 2012), <http://content.time.com/time/world/article/0,8599,2107750,00.html>. Bolivia possesses potential as a coffee exporter because of its "wealth of high-altitude soil[, which] provides perfect refuge for beans as global warming forces crops to higher ground." *Id.*

110. *See generally* CLAWSON & LEE III, *supra* note 12, at 137. On the other hand, it remains to be seen how the industrialization of the coca leaf could yield products that could be a dependable source of income for the farmers, income that would replace that which is gained from cultivating coca leaf and seeing it end up in the hands of drug traffickers and cocaine producers. In addition, if the coca leaf were to be legalized, there would presumably be more coca produced not just in Bolivia but in Peru and Colombia as well, which would prove challenging to the international community that seeks forced eradication of excess coca. *Id.* Bolivia's challenge would be to regulate the amount of new coca grown should the conflicting language in Article 49 of the Single Convention be amended or removed. One way to get farmers to move to planting alternative crops would be to lower coca prices. *Id.* at 153. Another way would be to increase coca production costs and remove subsidies on products like kerosene that can be used to process coca leaf into coca sulfate paste. *Id.* at 154. Still another way to reduce dependence on the coca leaf would be to help farmers move to more promising agricultural areas where alternative crops may grow better or create industrial jobs for the farmers. *Id.* at 156. Total crop substitution may not be the answer for Bolivia, as the coca leaf figures too importantly in the cultural traditions of its indigenous people, but further development of crop alternatives should continue to be pursued.

10, 2013.<sup>111</sup> Like the coca leaf, cannabis (also known as marijuana) is also a Schedule I drug under the Single Convention.<sup>112</sup> The Single Convention places similar restrictions on cannabis cultivation as those placed on opium cultivation, described in articles 23 and 28.<sup>113</sup> Additionally, some states in the United States have also recently amended their marijuana legislation.<sup>114</sup> It appears that the argument for legalizing marijuana in the United States is steadily gaining traction, as two individual states, Washington and Colorado, passed legislation in November 2012 allowing recreational use of marijuana.<sup>115</sup> President Obama has stated that the federal government should not be so concerned with policy matters concerning marijuana use as with other more pressing matters on hand, further sending ripples that the country may be ready to shift to a more relaxed stance on the use of the drug within its borders (at least under state law).<sup>116</sup> As a result, part of the reason for Bolivia's long struggle to have

111. *Uruguay Becomes First Nation to Legalise Marijuana Trade*, BBC News (Dec. 11, 2013), <http://www.bbc.co.uk/news/world-latin-america-25328656>. Interestingly, the Uruguayan government hopes that it will be able to combat the drug cartels by taking this approach. *Id.*

112. Because Uruguay is also a Party to the Single Convention, which has listed cannabis as a Schedule I drug, it remains to be seen how the nation will deal with its international obligations, a la the coca-leaf chewing issue in Bolivia. *See* Single Convention, *supra* note 30.

113. *See* Single Convention, *supra* note 30, at 12, 14.

114. *See generally* Robin Room, *Reform by Subtraction: The Path of Denunciation of International Drug treaties and Reaccession with Reservations*, 23 INT'L J. DRUG POL'Y 401 (2012).

115. *See* Gene Johnson, *Legalizing Marijuana: Washington Law Goes Into Effect, Allowing Recreational Use of Drug*, HUFFINGTON POST (Dec. 6, 2012), [http://www.huffingtonpost.com/2012/12/06/legalizing-marijuana-washington-state\\_n\\_2249238.html](http://www.huffingtonpost.com/2012/12/06/legalizing-marijuana-washington-state_n_2249238.html). The legal possession of marijuana for recreational use under Washington Initiative 502 is limited to an ounce or less of marijuana by adults over the age of 21. *Id.* In Washington, the law still bans smoking the drug in public. *Id.* In Colorado, Amendment 64, which passed in November 2012, is the amendment to the Colorado state constitution that allows for the personal use of marijuana for adults who are 21 years of age or older. *See* Colleen Curry, *Colorado Pot Clubs Celebrate Legal Marijuana in New Year*, ABC NEWS (Jan. 1, 2013), <http://abcnews.go.com/US/marijuana-clubs-ring-year-colorado-legalized-pot-smoking/story?id=18108083#.UOzxc3f4bjs>. The Colorado law allows individuals to possess one ounce of marijuana and grow six marijuana plants. *Id.* Yet, possession and selling of marijuana is still illegal under federal law. The establishment of marijuana-themed members-only clubs where people can go to smoke their private stash of the drug, however, is a big step for states in relaxing their cannabis laws with an eye toward possibly reforming the federal marijuana law. *Id.* Because cannabis is an illicit drug under the Single Convention, how this situation develops in the future should be interesting to see. The difference between the international legislation regarding cannabis and the coca leaf, however, is that there are no resolutions, declarations, or laws that acknowledge that cultivating cannabis is an indigenous and cultural right.

116. *See* David G. Savage, *Obama Considers Easing Up Federal Marijuana Regulation*, LA TIMES (Dec. 14, 2012), <http://articles.latimes.com/2012/dec/14/nation/la-na-obama-legal-marijuana-20121215>. Moreover, there has been discussion over easing federal law for marijuana possession. Sen. Patrick J. Leahy, who is the chairman of the Judiciary Committee, has stated that “[o]ne option would be to amend the Federal Controlled Substances Act to allow possession of up to one ounce of marijuana, at least in jurisdictions where it is legal under state law.” *Id.* Indeed, on June 23, 2011, a bill was introduced in the United States House of Representatives, the “Ending Federal Marijuana



the coca leaf decriminalized may have been the international community's long-held fear of setting an unwanted precedent for drug liberalization.

However, concerns about deterrence issues should be put aside in this particular situation under the notion that possible legalization of the coca leaf for exportation in light of its perceived medicinal and scientific advantages is akin to marijuana being legalized for medical purposes or recreational use in some states. As long as a legitimate distinction can be made between the coca leaf and cocaine, further exceptions made for the coca leaf may produce more benefits than harmful effects.

#### CONCLUSION

With the recent United Nations announcement on recognizing local coca leaf use in Bolivia, some uniformity of the international regulations has been achieved, and Bolivia can align its domestic laws in accordance with international legislation. But still more can be done to acknowledge the coca leaf's positive effects and its potential marketability to the world. The international community should make efforts to better understand that coca leaf chewing itself is arguably distinguishable from consuming cocaine and is not considered dangerous to people who consume it. More studies should be conducted to verify that the coca leaf compares more favorably to caffeine or nicotine, which many people around the world consume daily. In summation, though the coca leaf may technically be a minor stimulant in that it works as an aid to people in dealing with hard labor and hunger suppression, it does appear to have many recognizable benefits. Ultimately, allowing further exceptions for the use of the coca leaf may be appropriate.

*Abraham Kim*\*

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Prohibition Act of 2011," which actually proposed removing marijuana from Schedule I of the Controlled Substances Act. Although the bill was not enacted, it was "the first time in seventy-three years" that something like it had been submitted. *Let the End Marijuana Prohibition Act Get a Hearing*, CHANGE.ORG, <http://www.change.org/petitions/let-the-end-marijuana-prohibition-act-get-a-hearing>. See also H.R. 2306, 112th Cong. (2011).

\* J.D. (2014), Washington University School of Law; B.A. (2006), University of California, Berkeley. Many thanks to the editorial board and staff of the *Global Studies Law Review* for their helpful comments and suggestions.