



WOLA

**Observations on the
International Narcotics Control Board (INCB) Report for 2010**
(see selected excerpts below)

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*Observe INCB report EMBARGO:
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Coca chewing (see paragraphs 90, 137 and 141)

The Board again stresses the need to comply with the obligation under the 1961 Single Convention to abolish coca leaf chewing, castigating Bolivia, Peru and (for the first time) Argentina for failing to ensure full compliance with this treaty obligation. There is no doubt that the 1961 Convention requires countries to abolish coca leaf chewing, so in strictly legal terms the INCB is correct to remind countries of that obligation. However, the 1988 Convention subsequently created some legal ambiguity by saying in article 14.2 that any measures adopted "shall respect fundamental human rights and shall take due account of traditional licit uses, where there is historic evidence of such use." Moreover, Bolivia made a formal reservation to the 1988 Convention, stressing that its "legal system recognizes the ancestral nature of the licit use of the coca leaf." The Board fails to make any reference to Bolivia's proposed amendment to delete the obligation to abolish coca leaf chewing, even though Bolivia's proposal is currently pending a decision of the UN Economic and Social Council (ECOSOC). The Board could have chosen to not simply remind countries of their obligation regarding coca chewing, but also point out the longstanding ambiguities about it and commend Bolivia for initiating the legitimate amendment procedure established under the Convention to bring this dilemma to the attention of the appropriate UN body (ECOSOC) and the Parties to the Convention. In any case, the insistence of the Board to call on countries to abolish coca leaf chewing serves to underline the importance of the proposed amendment, because it is clear to everyone – including the Board – that traditional use of coca leaf will simply never be abolished.

Interference with the World Health Organization (WHO) mandate

(see “special topics” 3 and 6, paragraphs 273-274 and 284-287)

The 1961 and 1971 Conventions explicitly mandate the WHO to make recommendations about the scheduling of substances. In recent years the INCB has repeatedly interfered with that mandate by proposing to impose stricter controls on a number of substances currently not included in the UN drug control convention schedules, sometimes directly contradicting the recommendations coming from the WHO Expert Committee. This year’s INCB report includes for the first time a section under “special topics” about “Plant material containing psychoactive substances” where a number of inconsistencies are outlined with regard to the treatment of plants and their alkaloids under the current treaty system. While it is useful that the Board points out such inconsistencies, its recommendation “that Governments should consider controlling such plant material at the national level where necessary” is beyond the Board’s mandate and in contradiction to previous WHO findings (including in cases such as khat, which the WHO Expert Committee has discussed several times, concluding that stricter controls were not necessary). Similarly, under a section on recently identified “designer drugs,” the Board directs its attention to mephedrone, suggesting countries to take action “with a view to adding the substance to any of the Schedules of the 1971 Convention.” In this case the Board does refer to the problem that for some time the WHO has not been able to convene its Expert Committee, but the Board does not call explicitly on countries to provide funding to the WHO to enable it to fulfill its treaty mandate. Indeed, lack of adequate funding is the main obstacle to the WHO’s consideration of these issues, and the INCB seems to try to fill that void by providing recommendations of its own, without the proper treaty mandate to do so.

Decriminalization

On the positive side, this year’s INCB report for the first time does not include any wording to criticize countries for decriminalizing possession of drugs for personal use. Last year the Board strongly criticized Argentina, Brazil and Mexico (see TNI/WOLA press release, [“UN’s International Narcotics Control Board’s Annual Report oversteps mandate and interferes with countries’ sovereignty.”](#)) The Board appears to have finally recognized that such policy changes are in fact allowed under the treaties. In reference to the Czech Republic, for example, the Board simply mentions in a neutral way the introduction of quantity thresholds for possession for personal use below which possession is no longer considered a criminal offence (see paragraph 699). In the case of cannabis policy developments in the United States (see paragraphs 394-395), the Board welcomes the strong stance of the federal government against the California referendum (Proposition 19 to regulate cannabis, defeated in November 2010 by a small 54-46 percent vote) and, more controversially, expresses its deep concern about the medical marijuana systems that have been approved and developed in 14 States.

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II.2. Evaluation of overall treaty compliance in selected countries

Peru

90. The traditional habit of chewing coca leaf has not been abolished in Peru, as required under the 1961 Convention. Although the Board has called upon the Government of Peru to abolish all uses of coca leaf, including coca leaf chewing, traditional uses of coca leaf still continue in the country. The Board calls upon the Government, as a party to the 1961 Convention as amended by the 1972 Protocol, to ensure full compliance with its obligations under the Convention, including the obligation to eliminate all uses of coca leaf for purposes other than those provided for in the Convention.

II.4. Evaluation of the implementation by Governments of recommendations made by the Board following its country missions

Argentina

137. The Board notes that consumption of coca leaf (by chewing or in the form of tea) and its possession for such purposes are still permitted under the national legislation currently in force in Argentina. The Board calls upon the Government, as a party to the 1961 Convention as amended by the 1972 Protocol, to ensure full compliance with its obligations under the Convention, including the obligation to eliminate all uses of coca leaf for purposes other than those provided for in the Convention.

Bolivia

141. The Board notes with regret that no progress has been made by the Government of the Plurinational State of Bolivia in implementing the recommendations made by the Board following its mission in 2007 regarding coca bush cultivation and coca leaf production. The Government continues to implement its national Strategy for Fighting Drug Trafficking and Revaluing the Coca Leaf 2007-2010, which marks a significant shift in the political will and commitment of the Government to the objectives of the international drug control treaties. While the Strategy reaffirms the strong stand of the Government on dealing with the illicit manufacture of and trafficking in cocaine and with criminal organizations, the Strategy addresses the coca-chewing issue in a manner that is not in line with that country's obligations under the international drug control treaties to which it is a party.

E. Special topics

6. Plant material containing psychoactive substances

284. Many plants that contain psychoactive substances with stimulating or hallucinogenic properties, as well as preparations made from those plants, have traditional uses in some countries or regions; for example, some are used in religious rites. Under the 1961 Convention and that Convention as amended by the 1972 Protocol, plants that are the sources of narcotic drugs, such as cannabis plant, opium poppy and coca bush, are subject to specific control measures. In contrast, although some active stimulant or hallucinogenic ingredients contained in certain plants are controlled under the 1971 Convention, no plants are currently controlled under that Convention or under the 1988 Convention. Preparations (e.g. decoctions for oral use) made from plants containing those active ingredients are also not under international control.

285. Examples of such plants or plant material include khat (*Catha edulis*), whose active ingredients cathinone and cathine are listed in Schedules I and III of the 1971 Convention; ayahuasca, a preparation made from plants indigenous to the Amazon basin of South America, mainly a jungle vine (*Banisteriopsis caapi*) and another tryptamine-rich plant (*Psychotria viridis*) containing a number of psychoactive alkaloids, including DMT; the peyote cactus (*Lophophora williamsii*), containing mescaline; magic mushrooms (*Psilocybe*), which contain psilocybine and psilocine; Ephedra, containing ephedrine; "kratom" (*Mitragyna speciosa*), a plant indigenous to South-East Asia that contains mitragynine; iboga (*Tabernanthe iboga*), a plant that contains the hallucinogen ibogaine and is native to the western part of Central Africa; varieties of *Datura* containing hyoscyamine (atropine) and scopolamine; and *Salvia divinorum*, a plant originating in Mexico that contains the hallucinogen salvinorin A.

286. The Board notes increased interest in the recreational use of such plant materials. In addition, such plants are often used outside of their original socio-economic context to exploit substance abusers. As they can be transported quickly by air to any country in the world, the use of such plants or of preparations made from such plants, is no longer limited to the regions where the plants grow, or to the communities that have traditionally used the plants. Potential abusers have been using the Internet to inform themselves about the stimulating or hallucinogenic properties of such plant material, about the fact that the plant material is not under international control and about Internet sites through which the plant material can be purchased. As a result, increased trade, use and abuse of such plant material have been noted in many countries. The use of such plant material may have adverse effects on the abuser, including nausea, vomiting, drowsiness, poisoning and flashbacks. In addition, any impairment resulting from a person's use of such plant material might have serious consequences for the well-being of other persons – consequences similar to those of driving under the influence of psychoactive substances.

287. The Board notes that, in view of the health risks associated with the abuse of such plant material, some Governments have placed certain types of plant material and preparations under national control. The Board recommends that Governments that have not yet done so and have experienced problems with regard to persons engaging in the recreational use of or trafficking in such plant material, to remain vigilant (since the risks associated with such use may increase) and to notify the Board and the WHO of those problems. The Board recommends that Governments should consider controlling such plant material at the national level where necessary.

North America

1. Major developments

394. The Board notes the result of the referendum in California, which rejected the “legalization” of cannabis use in that state. That result represents a recognition of the danger of cannabis abuse and an affirmation of the international drug control conventions. The Board also notes the statement of the Government of the United States, confirming the Board’s position that federal law supersedes state law with regard to the obligations contained in the international drug control conventions. The Board notes that the Government of the United States will continue to enforce federal law in that regard. The cultivation of cannabis plants and the use of cannabis for purposes other than scientific purposes are illegal according to the federal law in the United States. The Board welcomes the statement of the Government of the United States that it firmly opposes the legalization of cannabis.

395. The Board is deeply concerned about “medical” cannabis schemes, which so far have been introduced in 14 states in the United States. The control measures applied in those states to the cultivation of cannabis plants and the production, distribution and use of cannabis fall short of the control requirements of the 1961 Convention.

Europe

3. National legislation, policy and action

699. Also in December 2009, the Government of the Czech Republic stipulated quantity-based limits for the illegal possession of controlled drugs without intent to sell. The limits were introduced as part of a revision of the penal code with effect from 1 January 2010. Under the new law, illegal possession of controlled drugs in quantities less than the defined amount is classified as an administrative offence.

E. Special topics

3. Recently identified “designer drugs”

273. Furthermore, in view of the fact that mephedrone is abused in several regions and appears to be smuggled from region to region, Governments might consider notifying the Secretary-General of problems experienced with the

abuse of mephedrone on their territory, with a view to adding the substance to any of the Schedules of the 1971 Convention. In that regard, the Board notes that WHO has, for some time, not been able to convene its Expert Committee on Drug Dependence to assess substances for possible scheduling under the 1961 Convention and the 1971 Convention, a situation that has serious repercussions for the international drug control system.

274. The Board therefore urges Governments and international entities such as UNODC, through its Laboratory and Scientific Section, and WHO to develop effective measures to address the problem of “designer drugs”. In view of the responsibility given to WHO under the 1961 Convention and the 1971 Convention, the Board calls on WHO, as a first step, to resume its activities to assess new substances as soon as possible.