

Cabinet of the Minister

[Seal]  
Plurinational State of Bolivia  
Ministry of Foreign Affairs

La Paz, 24 February 2012  
GM-21/2012

Dear Secretary of the INCB,

I am addressing you in reply to your note INCB-CES BOL 05/12 BOL 114(3) 161/1 of 17 February 2012 in which reference is made to the INCB mission to the Plurinational State of Bolivia that took place between 15 and 16 December 2011 and which in turn makes known the conclusions to the INCB deliberations regarding the abovementioned mission.

In this sense, the Plurinational State of Bolivia would like to call your attention, with deep regret, to the biased character and inferences of your note and to reject unacceptable judgments, because the INCB and its Secretariat are limited in their mandate to suggesting consultation, establishing a dialogue and requesting explanations from states. Therefore, the Commentary on the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961, specifies that the Board is “of course also subject to the restrictions imposed upon its authority by that treaty. The Board may e.g. not recommend remedial measures to an individual government without its consent” (p. 12), except for in extreme cases where the INCB explicitly invokes its authority under Article 14 of the Single Convention, which it did not do in this case.

The fact that, according to your note, the purpose of the mission was to analyze “the grave consequences for international drug control” of our political decision makes it clear that the mission apparently arrived in our country already prejudiced. This is the same prejudice which was publicly expressed by the INCB in its press statement of 6 July 2011, where it is mentioned that “such approach would undermine the integrity of the global drug control system”. Your letter simply repeats the position that the President of the INCB had already embraced, without examining in a serious manner the arguments which have been explained to you in great detail during your visit.

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To Mr.  
Andres Finguerut  
Secretary General  
INCB  
Vienna-Austria

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The Plurinational State of Bolivia is a sovereign State strictly governed by its observance of international law and the compliance with its constitutional precepts and, as you well know, it has actively participated in the international drug control system since the previous century. The State is party to the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 and to the Convention on Psychotropic Substances of 1971. Through ratification done on 3 September 1976 the State was also party to the 1961 Single Convention and the 1972 Protocol, until December 2011. I should remind you that the Plurinational State of Bolivia had to present a reservation in order to reconcile its international obligations derived from the Single Convention with its new Political Constitution, due to the objection on the part of some of the States parties to the amendment proposed by Bolivia in 2009 regarding Article 49, subsections 1c) and 2e).

The United Nations Secretary-General has notified the States parties to the Single Convention of 1961 that Bolivia has decided to present its accession with a reservation, regarding subsection 2 of Article 41 and a reservation in accordance with subsection 3 of Article 50 of the abovementioned convention. The requirement of the Single Convention in the sense that the chewing of coca leaf must be prohibited is incompatible with Article 384 of the Bolivian Constitution which protects coca in its natural state as part of Bolivian cultural heritage, as a natural and medicinal resource. Said requirements also violate cultural and indigenous rights as well as several international instruments including the United Nations Declaration on the Rights of Indigenous Peoples.

From the point of view of the Plurinational State, the purpose of the INCB mission was to receive governmental explanations on its unequivocal political commitment, as manifest in its effective regime of control of illicit drugs and its firm political will to re-accede the Single Convention on Narcotic Drugs of 1961 and, at the same time observe, on-site, the results of the advances in the stride against illicit narcotic trade achieved to date by the Bolivian government.

The Plurinational State of Bolivia regrets that the Board has failed to understand and reflect the firm will of the Bolivian government to continue to be part of the Single Convention on Narcotic Drugs of 1961. This is why it feels forced to express its utmost rejection of the disqualifications expressed in your note, which fail to ponder on the conclusive and unprecedented results of the Bolivian commitment to control the surplus coca cultivation and the illicit drugs trade.

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It is also important to categorically clarify that the decision of the government of the Plurinational State of Bolivia to denounce the 1961 Single Convention on Narcotic Drugs and its re-accession with a reservation, first and foremost refers to the cultural and medicinal use of the coca leaf. The cultivation, use and consumption of the coca leaf is traditional and has been a part of the cultural identity of most of the 36 nations which form the Plurinational State of Bolivia for millennia. The chewing of the coca leaf is understood as one of the “traditional licit uses” recognized in Article 14 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

We categorically reject the claims and erroneous opinions expressed in your note in the sense that the Plurinational State of Bolivia has the intention of undermining the integrity of the international drug control system, as it has been wrongly interpreted. This is why we feel obliged to recall that, contrary to this inference, my country has been acting with the utmost degree of respect, attention and compliance with the aforementioned legal instrument. Therefore, we would like to record that Bolivia has acted in observance with the legal normative dispositions clearly established in the Single Convention of 1961 and not, as it has been stated, that my government has adopted technicalities without precedent. Many States parties have established reservations of different kinds to the three Conventions at the moment of ratification or accession. The circumstances of a strict military dictatorship were the political conditions at the time when Bolivia ratified the Single Convention in 1976. At that time, the same reservation would have been accepted without problem, as it happened later with our reservation to the Convention of 1988. The practice of late reservations or utilizing the mechanism of denunciation and re-accession with reservation may be exceptional, but several precedents can be found in international law. The withdrawal of Bolivia from the Convention is framed within the legal parameters established in the letter and spirit of the treaty.

The note omits an account of the explanations which President Evo Morales gave in his communication of 29 December 2011 about the fundamental reasons guiding Bolivia to proceed in accordance with the provisions of the Convention and fails to note the explanations given by my government during the recent visit of the INCB Mission to La Paz. This is why we have begun to seriously question the value of a dialogue with the INCB, while this should be the main objective of its acts, to stimulate a dialogue with the States, geared towards helping them find feasible solutions when they encounter difficulties with the interpretation or implementation of certain provisions. As it is established in the Commentary on the 1972 Protocol, the INCB “has to maintain friendly relations with Governments, guided in carrying out the Conventions by a spirit of co-operation rather than by a narrow view of the letter of the law” (Commentary on the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961, p. 11).

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Moreover, I am obligated to categorically object to the erroneous inference on the part of the Board when confusing the unilateral accession-with-reservation procedure with a supposed intentionality regarding the reclassification of the coca leaf in List I of the Convention of 1961. In this manner, the INCB seeks to discredit and convolute the intention of the Plurinational State of Bolivia that is well aware of the legal dispositions established in the Conventions for this purpose and the difference between these, and the process begun in June with the denunciation.

The Plurinational State of Bolivia has reiterated its commitment and manifested its political will to continue being party to the Convention, as well as to keep on taking every effective and necessary measure to control the surplus cultivation and commercialization of coca leaf in order to prevent its improper use and the illicit production of narcotic drugs which could be extracted from the leaves, so as to avoid the diversion of the coca leaf towards the illicit market.

Bolivia, through its Act No. 147 has given enough guarantees to the international community regarding its commitment to faithfully perform and carry out the provisions contained in the Single Convention on Narcotic Drugs, except those provisions stipulated in the reservation, until its accession becomes effective.

It is convenient to remember once more that the conventions have described the authority of the Board explicitly in terms of cooperation and dialogue, especially the 1972 Protocol amending the Single Convention of 1961 which specifies some of the functions of the Board and –as established in the commentary—the “restrictions imposed on its authority”. It therefore details that the Board may lend assistance or give advice only to a Government requesting it expressly. Bolivia has always been interested and willing to partake in an open and honest dialogue with the INCB, but this does not authorize the Board to cast judgements about the reservation presented by Bolivia to the 1961 Convention, as this is an attribution of the States parties. Moreover it should be pointed out that this reservation is consistent with the reservation of Bolivia accepted under the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

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Finally, Mr. Secretary, honoring transparency and the respect that every State deserves, I would appreciate it if you could provide us as soon as possible with the report on the conclusions of the Mission of the INCB to my country as it was presented and discussed in its 103<sup>rd</sup> Session in Vienna, between 30 January and 3 February 2012, and the minutes of the discussion that the Board has had in this respect, in order for my government to evaluate the scope of such perceptions and give, if necessary, further explanation or clarification as required.

With this matter in mind, please accept once again the assurances of my highest consideration.

(Signed)

David Choquehuanca Céspedes

MINISTER OF FOREIGN AFFAIRS

CC'S

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To the 13 members of the INCB