

AIDE-MEMOIRE ON THE BOLIVIAN PROPOSAL TO AMEND ARTICLE 49 OF THE SINGLE CONVENTION ON NARCOTIC DRUGS OF 1961

1. In 2009, the President of Bolivia, Evo Morales Ayma, sent a letter to the General Secretary of the United Nations, Ban Ki Moon, in which the Government of the Plurinational State of Bolivia proposed to amend article 49 paragraphs 1 c) and 2 e) of the Single Convention on Narcotic Drugs of 1961, as modified by the Protocol of 1972¹. Both paragraphs state that “coca leaf chewing must be abolished within twenty-five years from the coming into force of this Convention as provided in paragraph 1 of article 41”; and that a Party to the Single Convention may reserve the right to temporarily permit coca leaf chewing in any one of its territories, whilst being subject to the restriction established in paragraph 2 e), that is to say, the practice will be tolerated for a period of no more than 25 years.
2. The General Secretary, in accordance with article 47(1) of the Convention communicated the amendments proposed by Bolivia to the Parties and to the Economic and Social Council (ECOSOC). The European Union, Japan, Russia, China, United States and Brazil, among others, were member states during the period of the ECOSOC when the Council adopted, by consensus, decision E2009 L.31 on July 30th 2009.
3. The before mentioned decision gave the mandate to initiate the procedures established in paragraph 1 b) of article 47, which state that all Parties shall be asked whether they accept the proposed amendment as well as to submit to the ECOSOC any comments on the proposal within a period of eighteen months. In case that no objection is presented, the amendment will go into effect.
4. The objective of the Bolivian proposal of amendment to the Single Convention is to eliminate the obligation to prohibit the chewing of coca leaf in order to enable countries where there is evidence of this ancient, cultural and religious tradition to preserve its own millenary indigenous cultural practice; based on grounds that it does not cause any harm to people’s health nor any kind of disorder or addiction. The Constitution of the Plurinational State of Bolivia declares coca leaf a part of the nation’s cultural heritage and biodiversity.
5. Bolivia’s proposed amendment only seeks to eliminate paragraph 1c) and 2 e) of Article 49 of the Single Convention; it does not, under any circumstance attempt to modify any other part of this agreement. It is neither an attempt to alter its lists, action for which there is a special procedure detailed in article 3 of the Convention.
6. Furthermore, the proposed amendment will not cause any changes to the current internal legislation of the Parties. If the internal regulation of any country bans the practice of coca leaf chewing, this will remain unchanged. However, an agreement on this amendment makes it possible, for those that decide so, to preserve this millenary tradition without their citizens being labeled as criminals violating international law.
7. As mentioned above, the Single Convention provided that by 1989, 25 years after its coming into force, the practice of coca leaf chewing had to be abolished. As

¹ Bolivia has ratified the Single Convention on Narcotic Drugs, 1961, as amended by the Protocol of 1972 amending the Single Convention on Narcotic Drugs.

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evidenced today, this was a failure easily explained and justified since the consumption of coca leaf is a deeply rooted and necessary cultural practice in the Andes. Moreover, chewing and drinking coca leaf have extended not only to non-Andean indigenous peoples, but also to non-indigenous sectors of the region. However, even after the eradication failure and the adoption of Vienna's Convention of 1988², the International Narcotics Control Board (INCB) continues to affirm that all the uses of coca leaf considered traditional, including coca-leaf chewing and the manufacture and consumption of coca tea and other derived products continue to be illicit.

8. Several international organizations, forums and different countries, have expressed their support to respect traditional and cultural practices, such as the licit use of coca leaf. For example, the Africa- South America (ASA), the Union of South American Nations (UNASUR) the Bolivarian Alliance for the Peoples of Our America (ALBA), The Southern Common Market (MERCOSUR), among others support the Bolivian proposal to amend article 49. For instance, UNASUR in its Presidential Joint Communiqué of August 2010, states that:

"Given that one of the objectives of UNASUR's Constitutive Treaty is the promotion of cultural diversity and the expression of the traditions and knowledge of the peoples of the region in order to strengthen their sense of identity we recognize that coca leaf chewing is a cultural manifestation of the people of Bolivia that shall be respected by the international community".

9. At the UN level several statements have been formally approved:

I. The Permanent Forum on Indigenous Issues in its eight session of May 2009, established that:

"The Permanent Forum recognizes the cultural and medical importance of coca in the Andean region and other indigenous regions of South America. It also notes that the Single Convention on Narcotic Drugs (1961) specifically prohibits the chewing of coca leaf. The Permanent Forum recommends the amendment or abolishment of the sections of the Convention relating to the custom of chewing coca leaf that are inconsistent with indigenous people's rights to maintain their traditional practices in health and culture enshrined in Articles 11, 24 and 31 of the Declaration³"

² The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances states in its Article 14, paragraph 2 that: "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".

³ United Nations Declaration on the Rights of Indigenous People, September 13th 2007

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As well, The Permanent Forum on Indigenous Issues in its Ninth Session of April 2010, states the following:

“The Permanent Forum welcomes the decision 2009/250 of the Economic and Social Council on a proposed amendment to the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol, related to the traditional use of the coca leaf. The Forum recommends that Member States support this initiative...”

II. Recalling UNESCO’s Convention on the Protection and Promotion of the Diversity of Cultural Expression, it is important to note that cultural diversity within the framework of democracy, tolerance, social justice and mutual respect between peoples and cultures, is indispensable for peace and security at the local, national and international level.

III. The ancestral use of coca leaf for traditional and medicinal consumption is also contemplated in the Convention concerning Indigenous and Tribal Peoples in Independent Countries of The International Labor Organization (ILO).

10. If agreed upon, Bolivia’s proposed amendment will not imply accepting nor promoting the free cultivation of coca leaf, in accordance with its obligations to the Single Convention. In fact, Bolivia will continue to have a firm and unequivocal commitment to fight drug trafficking as it always has, within the framework of the principle of common but differenced responsibilities and respective capabilities.

11. The proposed amendment does not imply that coca leaf will be produced without restriction or limits for its traditional licit consumption, which is referred to in article 14 (2) of the Convention of 1988. Because of this and in order to start adjusting the production levels to the levels of traditional consumption, the European Commission has been supporting the “Integral Study of the Coca Leaf in Bolivia”. In that regard and in accordance to Bolivia’s commitments to the Single Convention, the Government is working to reduce the surplus of coca leaf production. Up to November 21st of this year, 7490 hectares have been eliminated.

12. From Bolivia’s point of view, the international community holds in its hands a historic opportunity to correct a misconception regarding coca leaf chewing by eliminating paragraphs 1 c) and 2 e) of article 49 of the Single Convention. This action will give back the dignity and lawful right to the people that consume coca leaf for traditional and medicinal purposes to legally exercise this cultural and harmless practice. Therefore, a positive agreement on Bolivia’s proposed amendment will benefit the Single Convention given that a norm that is self-correcting grows stronger with application.