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Francisco E. Thoumi



Universidad del Rosario
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THOUMI, Francisco E.

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A Modest Proposal to Clarify the Status of Coca in the United Nations Conventions

*Francisco E. Thoumi**

Centro de Estudios y Observatorio de Drogas y Delito –CEODD–
Facultad de Economía, Universidad del Rosario
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I. Introduction

The implementation of anti-drug policies that focus on illicit crops in the Andean countries faces many significant obstacles, one of which is the cultural clash it generates between the main stakeholders. On the one hand one finds the governments and agencies that attempt to implement crop substitution and eradication policies and on the other the peasant and natives communities that have traditionally grown and used coca or those peasants who have found in coca an instrument of power and political leverage that they never had before. The confrontation about coca eradication, alternative development and other anti-drug policies in coca growing areas transcends drug related issues and is part of a wider and deeper confrontation that reflects the long-term unsolved conflicts of the Andean societies.

All Andean countries have stratified and fragmented societies in which peasants and Indians have been excluded from power. In Bolivia, Ecuador and Peru most peasants belong to native communities many of which have remained segregated from “white” society. The mixing of the races (*mestizaje*) in Colombia occurred early during the Conquest and Colony. Those of Indian descent became subservient to the Spanish and Creoles. The society that evolved was (and still is) highly hierarchical, authoritarian, and has subjacent racist values. The resulting political system has been exclusionary of large portions of the population.

Among Indian communities coca has been used for millennia and its use has become an identity symbol of their resistance against what may be looked at as foreign invasion. “The Andean Indian chews coca because that way he affirms his identity as son and owner of the land that yesterday the Spaniard took away and today the landowner keeps away from him. To chew coca is to be Indian...and to quietly and obstinately challenge the contemporary lords that descend from the old encomenderos and the older conquistadors” (Vidart, 1991: 61, author’s translation).

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In Andean literature on illegal drugs as well as in seminars, colloquia and other meetings where drug policies are debated, complaints are frequently expressed about the treatment of coca in the same category as cocaine, heroin, morphine amphetamines and other “hard” drugs.

The complainants assert that “coca is not cocaine” and that it is unfair to classify coca, a nature given plant which has been used for millennia in the Andes without significant negative effects on users, in the same category as man made psychotropic drugs. They also argue that coca has manifold social and religious meanings in indigenous cultures, that coca is sacred and that the requirement of the 1961 Single Convention demanding that Bolivia and Peru completely eradicate coca within 25 years is limiting Indigenous communities in their freedom to practice their religions.

In most debates about drug interdiction, the views of those who oppose that approach are not accepted as legitimate. Indeed, “prohibitionists” demonize drugs and those who oppose drug policies in Latin America frequently demonize the United States as the imperialist power that imposes them. This dual polarization is a main obstacle to establish a meaningful policy debate aimed at broadening the policy consensus necessary for successful policy implementation. This essay surveys the status of coca in the United Nations Conventions, explains why it is confusing, and how a few changes would eliminate some of the sources of conflict and help organize and control licit coca markets in the Andes. The current disorganized and weakly controlled legal coca market in Peru has been analyzed to demonstrate its deficiencies and to illustrate possible improvements in international drug control policies.

II. The current status of coca

The current status of coca in the UN Conventions is ambiguous and confusing. Coca is included in Schedule I of the 1961 the United Nations Single Convention on Narcotic Drugs and the subsequent 1971 Convention on Psychotropic Drugs and 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. In effect, coca leaves are considered a drug subject to the highest level of control. The use of drugs in this schedule is not accepted except for medical and scientific purposes. Yet, the 1988 Convention made an apparent concession to traditional coca users including a fairly vague clause that accepts the use of coca for “traditional purposes” but it did not clearly specify that coca could have licit uses.

The conventions’ references to coca provide a clear picture of the international treatment given to it. Article 2 of the 1961 Single Convention

deals with “Substances under control” and reads: “Except as to measures of control which are limited to specified drugs, the drugs in Schedule I are subject to all measures of control applicable to drugs under this Convention and in particular to those prescribed in articles 4 (c), 19, 20, 21, 29, 30, 31, 32, 33, 34 and 37. Article 4 specifies the general obligations of the signatory countries: “The parties shall take such legislative and administrative measures as may be necessary....(c) Subject to the provisions of the Convention, to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in and possession of drugs.”

Articles 19 and 20 deal with country requirements to report estimates of drug demand requirements and drug supply statistics. Article 21 establishes limitations on drug manufacture and importation. Articles 30, 31, 32, 33, 34, and 37 establish controls to trade, distribution, possession and seizures of drugs.

Article 26 requires countries that permit the cultivation of coca to create an Agency to control the market. This agency should “take physical possession of the crops as soon as possible after the end of the harvest.” Furthermore, the Parties to the Convention should “as far as possible enforce the uprooting of all coca bushes that grow wild. They should destroy the coca bushes if illegally cultivated.”¹

Article 27 was especially designed to accommodate the needs of Coca-Cola: “The Parties may permit the use of coca leaves for the preparation of a flavoring agent, which shall not contain any alkaloids, and to the extent necessary for such use, may permit the production, import, export, trade in and possession of such leaves.” Paragraph 2 of this article requires statistical reporting on this trade.

Article 33 refers to possession of drugs: “The Parties shall not permit the possession of drugs except under legal authority.”

Article 49 establishes a few “transitional reservations” for opium, coca leaf chewing and cannabis. Paragraph 1 reads: “A Party may at the time of signature, ratification or accession reserve the right to permit temporarily in anyone of its territories: (...); (c) Coca leaf chewing”. Paragraph 2 (a) states that these “may be authorized only to the extent that they were traditional in the territories in respect of which the reservation is made, and they were permitted on 1 January 1961.” Paragraph 2 (e) reads: “Coca leaf chewing must be abolished within twenty-five years from the coming into force of this Convention.”

There is another reference to coca uses in the Single Convention as “preparations of cocaine containing not more than 0.1 per cent of cocaine calculated as cocaine base” are included in schedule III. Drugs on this

¹ This is different from the requirement imposed on legal opium regulating agencies to “purchase and take possession” of the crop (article 23).

schedule have a more lax treatment in reference to medical prescription, export and transportation requirements than those on schedule 1 but their use restrictions to medical and scientific purposes are maintained.

The 1961 Convention focused on the traditional plant based drugs: cocaine, heroin and marijuana, and classified coca leaves in the same list of other “hard” drugs. Furthermore, the only provision made for licit long-term coca leaves’ use was to assure coca leaf supply for Coca-Cola manufacturing, which always accounted for a very small amount of total coca production (not more than the product of 400 hectares). These dispositions became obsolete in 2000 when Coca-cola substituted other flavoring agents for coca. The Convention refers to coca leaf chewing as a practice that has to be eliminated and establishes a deadline for it to be abolished.

Coca has other industrial uses such as in the manufacture of coca tea, a common beverage in Bolivia, Peru and the north of Argentina and Chile. More important, other uses could be religious or social as coca leaves are used in divination sessions, religious rituals and as a facilitator of social interaction in friendly meetings. Besides, coca may have other potential industrial uses.² All these possible functions and uses of coca are implicitly banned since drugs in Schedule I can only be used for medical and scientific purposes.

The only exceptions to the applications of the United Nations Drug Conventions by the signatory countries are Constitutional. In other words, it would be necessary for a country to include in its constitution articles that would allow it to have drug uses beyond those sanctioned by the Conventions.

The 1971 Convention was convened after the large increase in synthetic drug use during the 1960s in the United States and Europe. The 1971 Convention focused on those drugs and it really did not deal with coca. Yet, article 7 reaffirmed the restrictions for drugs included in schedule 1: “In respect to substances in Schedule I, the Parties shall: (a) Prohibit all use except for scientific and very limited medical purposes by duly authorized persons, in medical or scientific establishments which are directly under the control of their Governments or specifically approved by them.”

In 1972 a short Protocol modified the 1961 Single Convention to make a few articles perfectly consistent with the 1971 Convention. These changes did not alter the status of coca.

By 1988 the perception of the drug “problem” had changed. Organized crime had become a greater concern for many governments as was the wealth accumulated through illegal drug trade. This is why the 1988

² In Bolivia, for example, small amounts of coca are used in toothpaste and a handful of manufactured products.

Convention is “against illicit traffic in narcotic drugs and psychotropic substances.” Most of the Convention deals with various criminal offenses and sanctions, international cooperation to fight drugs and norms to determine jurisdiction, asset confiscation, extradition, transfer of proceedings and the like. In 1988, it was clear that coca chewing had not been abolished and the governments of Bolivia and Peru were not about to do so. The Convention devoted one article (14) to “measures to eradicate illicit cultivation of narcotic plants and to eliminate illicit demand for narcotic drugs and psychotropic substances” where coca is mentioned. In paragraph 1 it is stated that any measure taken by the Parties to the Convention cannot be less stringent than what was required by the 1961 Convention. Paragraph 2 calls for the Parties to eradicate illicit cultivation but establishes limits to those activities: “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.”

Peru signed the 1988 Convention as approved, but Bolivia signed it with a reserve: “The Republic of Bolivia reiterates this reserve and considers:

- That the coca leave is not by itself a narcotic or psychotropic substance;
- that its use and consumption do not cause greater psychic or physic alterations than those resulting from the consumption of other plants and products used universally and freely;
- that the coca leave has widespread medical uses protected by traditional medical practice defended by the World Health Organization and ratified by science;
- that it has industrial uses;
- that the use and consumption of coca leaves is widespread in Bolivia. Because of this if the measures mentioned (in the Convention) were to be accepted, a large share of the Bolivian population would have to be considered as criminal and sanctioned accordingly which would make these norms inapplicable in this case;
- that it is necessary to state for the record that the coca leave is converted into a drug when it is transformed through chemical processes that use materials and equipment originated outside Bolivia;
- on the other hand, the Republic of Bolivia will take all pertinent legal measures to control illicit coca plantings, use, consumption and trade to avoid the use of coca in narcotics manufacture.”

III. Why the Conventions are confusing and problematic with regards to coca

The current Conventions do not provide a clear norm for coca. To begin with, Schedule I norms exclude all non-medical and research uses for coca, except for Coca-Cola manufacturing. In other words, the Conventions ban coca chewing, coca teas, etc. Article 14 of the 1988 Convention is very vague, as it does not assert that non-medical and research coca uses are licit. It does not specify what are its traditional uses and it is open to innumerable interpretations. For example, do traditional uses refer only to uses in traditional communities or should also include uses by rural migrants and urban dwellers without Indian ancestry?³ During the late XIX and early XX Centuries coca was used as an input in several products and in recent years it has been used in tooth pastes and some power drinks akin to “guaraná”, “ginseng” and “gingko biloba” (Rivera-Cusicanqui, 2003: 60). Do the Conventions allow these uses? Can coca tea and other licit coca products be marketed outside regions “where there is historic evidence of such use”?

The Conventions do not differentiate between natural plants and synthetic drugs placed in the same schedule and subjected to the same treatment. There are, however, significant differences between plants and synthetic drugs. On the one hand, plants have several components, one of which can be an addictive mind altering drug. Coca leaves are complex and contain 14 alkaloids and many vitamins and nutrients. Indeed, they do have value as food and current ritualistic and medicinal uses as well as potential manufacturing and medicinal uses. The conventions imply that only a few of those uses should be accepted, a point frequently raised by analysts in Bolivia and Peru. On the other hand, a synthetic drug is made of legal chemicals, in contrast to coca that is illegal, but it is specially designed and produced to generate a mind-altering effect. Some of these drugs have medical uses, others might have had those uses in the past but have now been supplanted by better drugs, and others have been designed only to have mind-altering recreational uses.

The Conventions have implicitly accepted that coca chewing is “bad” and that Indian communities and other users have to be weaned from that habit for their own good. Otherwise the 1988 Convention would have recognized explicitly that the 1961 Single Convention provision to ban coca chewing had been a mistake and that coca chewing is a legitimate coca use instead of having a vague reference to traditional uses. In the context of a

³ In the north of Argentina coca chewing is common practice among many citizens of European and Middle Eastern ancestry (Rivera-Cusicanqui, 2003: chap. 5)

multicultural and diverse world, the attempt to abolish a widespread native habit, is clearly a source of cultural confrontation and an obstacle to a fruitful policy debate aimed at improving current policies.⁴

The constitutions of the Andean countries could allow for traditional and industrial coca uses. However, no constitution has explicitly done so, although some of the articles establishing the rights of native communities could be interpreted that way. Still, this would be a subject of debate, both domestic and international, and the interpretations could change. Furthermore, even if the constitution of a country guarantees the use of coca, that would not give coca producers the right to export it. This is the case of Bolivian coca that is used to meet the demand for coca chewing in Northern Argentina (Rivera-Cusicanqui, 2003).

Mind altering drugs have been used in all societies but their uses have always been controlled. Societies have ritualized the use of some drugs and/or have developed social controls to cope with the negative social effects of drug use. This is the case with coca among native Andean communities and peasants where coca chewing is prevalent. Some might argue that coca is not a good substitute for food or that coca is an obstacle to the assimilation of Indian communities into modern Bolivia and Peru but these are hardly arguments to have countries committed by international conventions to ban coca chewing.⁵ Indeed, such a measure smacks of crass cultural imperialism.

A change in the Conventions to recognize as legitimate all uses of coca different from cocaine manufacturing or the production of other addictive mind-altering drugs and compounds would contribute to diffuse some of the current sources of conflict between coca growers and governments in the Andean countries and would also allow the development of better systems of licit coca market controls. This change would require tolerating coca uses other than medical and scientific that could include the consumption of very small amounts of cocaine included in coca leaves. This would give legitimacy to coca chewing, coca tea and other uses that do not generate higher social costs than current uses of tobacco, alcohol or coffee.

The suggested changes would also enhance the possibilities to improve licit coca market controls developing a system similar to the current one for opium poppy. The following section illustrates some of the problems encountered by the current licit market controls in Peru and suggests a few changes that would improve the existing system.

⁴ Not surprisingly, many analysts raise this issue. For example, Cabieses (1996: 1) argues that this has been “a historical mistake and an affront to Andean culture”.

⁵ Gagliano (1994) presents an excellent survey and discussion of the domestic debates around this issue throughout the history of Peru.

IV. Licit market control failure in Peru: traditional coca, legal coca and ENACO

Despite the 1961 Single Convention's mandate to take measures to abolish coca chewing 25 years after the Convention was ratified, the Peruvian government did not take any measures to satisfy this commitment. Only when coca plantings expanded during the 1970s in response to the growth in illegal international cocaine demand, the government took measures to regulate the market. In 1978 the military government of General Francisco Morales-Bermúdez enacted Law 22,095 aiming to repress "the traffic of dependence-creating drugs, to prevent their inappropriate use, to socially and physically rehabilitate addicts and to reduce coca plantings" (Cotler, 1996: 61). To achieve these goals the government established a multi-sectoral ministerial committee and a few months later the National Coca Company (Empresa Nacional de Coca, ENACO) that substituted the old Coca Estanco or government legal monopsony and monopoly charged with buying coca from peasants to market it domestically and internationally to Coca-Cola.

ENACO's functions included "to take a census of all legal coca producers, to monopolize coca marketing and industrialization and to control the traffic of chemical inputs used in the production of illegal drugs" (Ibidem, 62). Coca growers not included in the census became illegal. 25,148 coca growers that had approximately 17,900 hectares under cultivation were registered in the census in 1978 (ENACO, 2002).

The coca census was conceived as a stopgap measure that established transitory rights to grow coca while ENACO developed its legal marketing monopoly as the only legal grower and seller of coca. Indeed, article 33 of Law 22,095 reads: "after coca plantings are eradicated or substituted in the plots of individuals and private enterprises, only the State, through ENACO, would have the right to plant that crop, and only when plantings are justified by its industrialization, exports, medicinal or scientific research uses". The law's first temporary article reads: "those who control coca plots at the time this law is ratified have 90 days to inscribe themselves in ENACO's coca registry". Therefore, Law 22,095 did not grant permanent coca growing rights to coca growing peasants.

The census allowed peasants to continue to grow coca until the time when ENACO would assume its role assigned by law. This never took place. In effect, ENACO never tried to become a monopolist planter and individuals registered in the census and their heirs continued to grow coca and sell it to ENACO. The fact that the census subjects were individual growers rather than the land itself where coca was planted has produced a confusing situation.

A couple examples illustrate this point: if the right to grow coca is not legally transferable through sale or inheritance, what happens when a registered person dies? If a person who is registered purchases or leases land, does he/she have the right to grow coca on those lands? The meaning and implications of the census are today quite fuzzy. Law 27,436 of January 15, 2002 modified Law 22,095 and reads: “The State through the National Coca Company -ENACO S.A.- following the first transitory article of Law 22,095, will undertake the industrialization and marketing of coca leaves produced in the registered plots”. This new law states that the census applied to the land and not to the individuals, which contradicts Law 22,095. This interpretation is also taken in the government’s National Anti-Drug Strategy 2002-2007.

ENACO’s coca purchases and sales have been going on for about thirty-five years without serious estimates of the size of the licit coca demand. The management of legal coca crops in Peru has implicitly assumed that all coca produced by traditional coca growers has been for licit uses and that there are no leaks to the illegal market. Despite the lack of estimates of legal coca demand, the government accepts that there are 12,000 hectares of legal coca destined to licit uses.⁶ “Reasonable” ballpark estimates suggest that the plantings required to satisfy licit demand are likely to be smaller.⁷ A former ENACO General Manager pressed by the author to produce a ballpark estimate of legal requirements concluded that all coca tea consumed in Peru could be produced in about 40 hectares; Coca-Cola’s world demand of about 200 tons of coca leaf required about 180 to 220 hectares but as noted, that demand disappeared in 2000 when Coca-Cola substituted synthetic flavors for coca and stopped its coca imports. Coca chewing demand is very difficult to estimate because there are no reliable surveys or other studies but demand for ritual uses is low. Coca being used to work longer hours and placate hunger has declined as nutrition levels have increased, and as agriculture becomes more mechanized. Demand for social and recreational uses, including coca chewing to mediate social relations and to support the habit of coca chewing is very difficult to estimate. The former ENACO manager guessed that all coca chewing demand would be satisfied with the product of about 8,000 hectares. Besides, productivity increases due to better farming techniques, increased application of fertilizers and herbicides, etc., tended to lower the area required. For example, a number of journalists, UNODC officials and other observers report a dramatic increase in the number of coca plants per hectare and the use of new plant varieties that are more productive.

⁶ Recent reports indicate that USAID is undertaking a study to determine licit demand needs but the results or methodology used are not currently available.

⁷ The following paragraphs are based on work done by the author in Peru during November and December 2002 (Thoumi, 2003).

ENACO was established as a “public agricultural sector enterprise” but in 1982 it was converted into a “state enterprise subject to private law”. This was an important change because it eliminated all government subsidies and requires ENACO to be self-financing. In fact ENACO’s operating costs are financed by a large differential between ENACO’s coca buying and selling prices. ENACO’s mandate requires it to buy and sell coca in many regions and locations, despite very low transaction levels in many of them. ENACO is also obliged to have a detailed accounting of small purchases and to warehouse coca stocks. All these activities require an expensive bureaucracy that forces ENACO to have a large price differential between its purchases and sales. Consequently, there is a significant black market, of unknown size, for licit coca uses. ENACO was established to regulate the legal coca market in order to prevent leakages to illicit uses but the current system transfers the control costs to legal producers and consumers.

As noted above, the original 1978 census included 25,148 coca growers. Many of them are dead or others have moved to the cities or left the coca business or have decided to operate only in the black market. In late 2002 ENACO’s census had only 7,910 active coca growers concentrated in Cuzco (4,515) Ayacucho (1,100), La Libertad (1,100) and Huanuco (810). Puno, Amazonas and Cajamarca had a few others (ENACO, 2002). ENACO’s record shows very large variations in the ratio of coca purchased to the size of the coca plots. This implies that many registered coca producers may be using their land to grow coca destined to the black market. Indeed, the former ENACO manager acknowledged that ENACO has no way to determine the crop size of each licit producer and believes that ENACO handles only about 20% of the licit use of coca.

In a nutshell, ENACO has failed its mandate to control and regulate the licit coca market and to prevent leakages of licit coca to illicit uses. A clarification of the status of coca in the Conventions recognizing the legitimacy of coca chewing and other coca uses would allow the development of a much better system of licit coca production and controls of possible leaks to the illegal market. Such a change would require the establishment of a system similar to that of that the International Narcotics Control Board (INCB) has for licit poppy. This would also require the United Nations to estimate the magnitude of licit coca demand and the size of the licit coca plantings. In the case of Peru, a limited continued geographical area can be established to produce licit coca where controls are easier and a lot cheaper than the ineffective ones prevailing now. International cooperation funding could be used to “buy” the fuzzy current growing rights held by peasants who would not be allowed to grow coca anymore. Research on new possible industrial uses can be

explored openly in response to peasants' demands.⁸ More importantly, the recognition of indigenous, peasant and recent urban migrant communities' full rights to coca uses others than cocaine and possible similar products would facilitate political dialogue in the Andean countries and help diffuse a currently worsening confrontation between those groups and their governments. These minor changes would also show the concerned communities that the United Nations and the international community are serious about trying to understand and respect their traditions and culture.

The suggested changes would also improve the situation of the legal market in Bolivia. One issue raised in that country is its inability to export "gourmet" coca legally to satisfy the coca chewers' demand in Northern Argentina. Coca has been traditionally chewed in that region but the Argentinean military dictatorship banned coca chewing and imports in the late 1970s. Coca chewing and imports were allowed again after 1989 but only in small amounts for personal use. This has led to a significant contraband market and border corruption (Rivera-Cusicanqui, 2003: 189).

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⁸ This should not generate fears among prohibitionists. Indeed, it is highly unlikely that new uses are found. Coca was legal across the world for several centuries and no significant industrial uses were found. Coca has many components, but it does not appear to have a comparative advantage for the production of other goods. For example, it can be used to provide fiber for paper, but there are many much cheaper and better sources.