

NOTE

I'D LIKE TO MAKE A RESERVATION: BOLIVIAN COCA CONTROL AND WHY THE UNITED NATIONS SHOULD AMEND THE SINGLE CONVENTION ON NARCOTIC DRUGS

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INTRODUCTION

“We are not going to retreat one centimeter,” declared former Bolivian President Hugo Banzer during a speech in 2001, expressing his “firm commitment . . . to leave Bolivia without drugs by 2002.”¹ His pledge to bring Bolivia “totally outside the drug circuit”² was not mere rhetoric; a U.S.-backed program of forced coca eradication known as *Plan Dignidad*³ was already underway, pitting Bolivian peasants against the military.⁴ As part of President Banzer’s plan, machete-wielding soldiers descended on Bolivia’s coca-growing regions, hacking apart the coca farmers’ crops.⁵ Coca growers organized protests in response, resulting in a series of violent confrontations with the military.⁶ During the period of instability that followed the implementation of *Plan Dignidad*, “farmers threw rocks and sticks of dynamite at soldiers, who fired tear gas and rubber bullets in return.”⁷ Coca growers protected

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1. Clifford Krauss, *Bolivia Wiping Out Coca, at a Price*, N.Y. TIMES (Oct. 23, 2000), <http://www.nytimes.com/2000/10/23/world/bolivia-wiping-out-coca-at-a-price.html> [<https://perma.cc/3T5V-C4RE>] (internal quotation marks omitted).

2. *Id.*

3. LINDA C. FARTHING & KATHRYN LEDEBUR, HABEAS COCA: BOLIVIA’S COMMUNITY COCA CONTROL 17 (2015), <https://www.opensocietyfoundations.org/sites/default/files/habeas-coca-bolivia-community-coca-control-20150706.pdf> [<https://perma.cc/6ZUG-UWMW>].

4. See Krauss, *supra* note 1; see also FARTHING & LEDEBUR, *supra* note 3 (explaining that the conflict between farmers and the military led to sixty deaths and 570 injuries).

5. See Krauss, *supra* note 1; see also FARTHING & LEDEBUR, *supra* note 3 (describing Plan Dignidad as a “forced military eradication” of coca plants).

6. See FARTHING & LEDEBUR, *supra* note 3.

7. *Coca Farmers Killed in Clash with Bolivian Soldiers*, CBC NEWS (Nov. 10, 2000), <http://www.cbc.ca/news/world/coca-farmers-killed-in-clash-with-bolivian-soldiers-1.212190> [<https://perma.cc/B39J-WJRG>].

their fields with booby traps and, in one instance, an “antinarcotics policeman was found buried . . . with acid poured on his face”⁸

By the time it was discontinued, *Plan Dignidad* had failed to achieve its objective of combating coca and cocaine production, succeeding only in “foment[ing] instability and poverty” in Bolivia’s coca-growing regions.⁹ The resounding failure of a zero coca policy manifested itself in wide-scale protests in 2005, which ultimately brought down the Bolivian government.¹⁰ The protests, organized by the coca growers unions in response to violent eradication efforts by the state, were led by Evo Morales, who at that time served as the leader of an association of unions for coca growers.¹¹ Following the protests, Bolivia made history by electing Morales as the country’s first indigenous president.¹²

Morales’ campaign focused on respect for indigenous people and culture, and after his election he implemented a system of legalization for growing small plots of coca, commonly referred to as “*Coca Sí, Cocaína No.*”¹³ Bolivia withdrew from the 1961 Single Convention on Narcotic Drugs (Single Convention) in 2012 over disagreement with the Single Convention’s treatment of coca chewing and coca cultivation.¹⁴ Bolivia then re-acceded to the Convention in 2013, this time subject to a reservation on coca leaf chewing.¹⁵

8. *Id.*

9. See FARTHING & LEDEBUR, *supra* note 3; see also Krauss, *supra* note 1 (stating that Plan Dignidad has imposed great costs on the region without impacting the overall supply of cocaine).

10. See Ryan Grim & Nick Wing, *Operation Naked King: U.S. Secretly Targeted Bolivia’s Evo Morales in Drug Sting*, HUFFINGTON POST (Sept. 15, 2015), http://www.huffingtonpost.com/entry/operation-naked-king-evo-morales_55f70da2e4b077ca094fdb1?e42huxr [<https://perma.cc/6KA7-QQ3V>].

11. See *id.*

12. *Evo Morales: A Bolivian Idol*, AL JAZEERA (Oct. 18, 2014), <http://www.aljazeera.com/programmes/talktojazeera/2014/10/evo-morales-bolivian-idol-201410171100284921.html> [<https://perma.cc/P4X5-LQZX>].

13. Ruxandra Guidi, *Bolivia Stands Up to US with Coca-Control Policy*, AL JAZEERA (Sept. 30, 2015), <http://www.aljazeera.com/indepth/features/2015/09/bolivia-stands-coca-control-policy-150930085832276.html> [<https://perma.cc/GCV4-TWF7>].

14. See Abraham Kim, *The Plight of Bolivian Coca Leaves: Bolivia’s Quest for Decriminalization in the Face of Inconsistent International Legislation*, 13 WASH. U. GLOBAL STUD. L. REV. 559, 564–65, 572 (2014); see also *Bolivia to Re-Accede to UN Drug Convention, While Making Exception on Coca Leaf Chewing*, U.N. OFF. ON DRUGS & CRIME, <https://www.unodc.org/unodc/en/frontpage/2013/January/bolivia-to-re-accede-to-un-drug-convention-while-making-exception-on-coca-leaf-chewing.html> [<https://perma.cc/X8DF-KHEW>] (last visited Apr. 1, 2017) (stating that Bolivia withdrew from the Single Convention, which prohibited coca chewing and certain cultivation methods).

15. See *Bolivia to Re-Accede to UN Drug Convention*, *supra* note 14.

Coca cultivation in Bolivia and in other Andean countries has a long history, predating the arrival of the Spanish in the sixteenth century,¹⁶ and rooted in indigenous traditions.¹⁷ Bolivians use coca leaves for a variety of reasons, including as medicine and in religious ceremonies.¹⁸ Chewing coca leaves is an accepted social practice in Bolivia, akin to a coffee break in other cultures, which helps “to increase productivity and stave off hunger while working in the fields.”¹⁹ As of 2015, approximately one in three Bolivians consumed coca in its raw, leaf form.²⁰

Since assuming the presidency, Morales has stressed the cultural importance of the coca leaf to Bolivian citizens while distinguishing the practice of chewing coca leaves from that of cocaine use.²¹ On this basis, the *Coca Sí, Cocaína No* program “established a system legalising small plots of coca in some areas such as the Chapare, where it had been targeted [for eradication], while encouraging farmers to find ways to prevent the leaf from entering the drug market.”²² These coca policies flew in the face of decades of international drug control law and policy, the provisions of which make little distinction between the unprocessed leaf and cocaine.²³ Morales’ coca policy has also led to a series of diplomatic disputes between Bolivia and the United States, including the expulsion of the U.S. Drug Enforcement Agency (DEA) from the country in 2008.²⁴ Initial reactions to Morales’ coca program, especially within the United States, were that government-sanctioned coca growth could only result in increased coca production and, therefore, increased cocaine manufacture.²⁵ Present statistics, however, reflect decreased coca production and lend support to Bolivia’s

16. See Charles W. Arnade & Peter J. McFarren, *Bolivia: Early Period*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/place/Bolivia/Early-period> [<https://perma.cc/WN54-BWKC>] (last updated Feb. 23, 2017).

17. See Melanie R. Hallums, *Bolivia and Coca: Law, Policy, and Drug Control*, 30 VAND. J. TRANSNAT’L L. 817, 822–23 (1997).

18. Kim, *supra* note 14, at 561.

19. Guidi, *supra* note 13.

20. *Id.*

21. See Kim, *supra* note 14, at 559, 561–64; Guidi, *supra* note 13.

22. Guidi, *supra* note 13.

23. See Single Convention on Narcotic Drugs, 1961, as amended by the Protocol amending the Single Convention on Narcotic Drugs, 1961, scheds. I–IV, Aug. 8, 1975, 976 U.N.T.S. 105 [hereinafter Single Convention on Narcotic Drugs] (listing the coca leaf immediately above cocaine as a Schedule I drug). Schedule I drugs are subject to the most government control. For a more detailed discussion of drug scheduling, see *infra* note 65.

24. See Guidi, *supra* note 13.

25. See Antonio Regalado, *Bolivia Plants Coca, and Cocaine Follows*, WALL ST. J. (Aug. 18, 2009), <https://www.wsj.com/articles/SB125055680375738823> [<https://perma.cc/CA9A-J2CD>].

policy.²⁶ For its own part, Bolivia maintains that the program has been a successful means of reducing the overall amount of illicit coca cultivated while balancing the cultural, social, and economic needs of its citizens.²⁷

In contrast, the United States has remained opposed to any expansion in coca cultivation and insists that Bolivian efforts to both combat the global drug problem and comply with international drug enforcement treaties are insufficient.²⁸ Upon the election of Morales to the Bolivian presidency, U.S. government officials began to assert that Bolivia was on its way to becoming a “narcostate”—a country with a government in cooperation with drug traffickers.²⁹ As of 2014, the United States maintained that Bolivia’s failure to adequately address drug trafficking and to prevent its coca from being used to produce cocaine is due, at least in part, to the expulsion of the DEA in 2008.³⁰ The DEA, undeterred by its expulsion from Bolivia and working out of Asunción, Paraguay, covertly investigated alleged cocaine trafficking in Bolivia.³¹ In September 2015, news leaked that “[t]he United States [had] secretly indicted top officials connected to the government of Bolivian President Evo Morales for their alleged involvement in a cocaine trafficking scheme.”³² The investigation was purportedly an “effort to undermine [Morales’] leadership.”³³

In addition to these secret indictments, on September 14, 2015,³⁴ the U.S. White House announced its intention to “officially ‘decertify’ Bolivia—a bureaucratic move which amounts to an accusation by U.S. officials that Bolivia is not sufficiently cooperative in combating drug trafficking.”³⁵ In a press release, the White House

26. See Robert Kozak, *Bolivia Cuts Coca Production for Fourth Consecutive Year*, *U.N. Says*, WALL ST. J. (Aug. 17, 2015), <http://www.wsj.com/articles/bolivia-cuts-coca-production-for-fourth-consecutive-year-u-n-says-1439835780> [<https://perma.cc/28JR-RELE>].

27. See Guidi, *supra* note 13.

28. See Bureau of Int'l Narcotics and Law Enf't Affairs, *Bolivia: 2014 International Narcotics Control Strategy Report*, U.S. DEP'T OF STATE, <http://www.state.gov/j/inl/rls/nrcrpt/2014/vol1/222849.htm> [<https://perma.cc/CMX7-XHUY>] (last visited Apr. 1, 2017).

29. Grim & Wing, *supra* note 10.

30. See Guidi, *supra* note 13.

31. Grim & Wing, *supra* note 10.

32. *Id.*

33. *Id.*

34. Press Release, The White House, Office of the Press Secretary, Presidential Determination—Major Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2016 (Sept. 14, 2015), <https://www.whitehouse.gov/the-press-office/2015/09/14/presidential-determination-major-drug-transit-or-major-illicit-drug> [<https://perma.cc/KK5J-T5AQ>] [hereinafter White House Press Release].

35. Grim & Wing, *supra* note 10; see White House Press Release, *supra* note 34.

identified Bolivia, along with Afghanistan, the Bahamas, Belize, Burma (Myanmar), Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, India, Jamaica, Laos, Mexico, Nicaragua, Pakistan, Panama, Peru, and Venezuela “as major drug transit and/or major illicit drug-producing countries.”³⁶ Of these countries, the press release further noted that Bolivia, Burma, and Venezuela were “countries that have failed demonstrably during the previous [twelve] months to adhere to their obligations under international counternarcotics agreements.”³⁷ However, the U.S. president also determined that “support for programs to aid Burma and Venezuela are vital to the national interests of the United States.”³⁸ Bolivia is absent from this additional determination,³⁹ which allows the United States to withhold funds normally given for drug control assistance.⁴⁰

The ongoing tension between Bolivia and the United States over Bolivia’s coca policies is part of a wider debate on the goals and overall effectiveness of the treaties and other agreements comprising the international drug control regime.⁴¹ In September of 2012, the leaders of several Latin American nations, concerned with the growing problems associated with the illegal international drug trade, requested that the United Nations convene an international conference with the aim of reforming international drug control policy.⁴² Thereafter, in December of 2012, the U.N. General Assembly adopted a resolution whereby the U.N. General Assembly Special Session on Drugs (2016 UNGASS), originally set to take place in 2019, was rescheduled to take place in April of 2016.⁴³

36. White House Press Release, *supra* note 34.

37. *Id.*

38. *Id.*

39. *See id.*

40. Grim & Wing, *supra* note 10.

41. *See generally* Jamie Doward, *Leaked Paper Reveals UN Split Over War on Drugs*, *GUARDIAN* (Nov. 30, 2013), <http://www.theguardian.com/politics/2013/nov/30/un-drugs-policy-split-leaked-paper> [<https://perma.cc/7AJK-BWES>] (discussing prohibitions in Colombia, Guatemala, and Mexico).

42. *The UN General Assembly Special Session on Drugs (UNGASS) 2016*, INT’L DRUG POL’Y CONSORTIUM, <http://idpc.net/policy-advocacy/the-un-general-assembly-special-session-on-drugs-ungass-2016> [<https://perma.cc/MM62-C2B8>] (last visited Apr. 1, 2017) [hereinafter *UNGASS 2016*].

43. *Id.*; *see* G.A. Res. 67/193, International Cooperation Against the World Drug Problem, ¶ 44 (Apr. 23, 2013).

The 2016 UNGASS presented a unique opportunity to reassess the current approach to the global drug problem.⁴⁴ U.N. member states should have used this opportunity to reexamine the provisions of the Single Convention with an eye toward making amendments. “Difficult negotiations,” however, produced “a disappointing outcome document” that failed to make substantial changes to international drug policy.⁴⁵ In considering possible amendments, the 2016 UNGASS should have looked to the turbulent history of Bolivian coca cultivation to understand the deficiencies in the current drug control system. Specifically, the 2016 UNGASS could have sought to amend Articles 49 and 50(3) of the Single Convention to allow signatories to enter a reservation while remaining parties to the Single Convention; or at a minimum, created a panel to explore similar future courses of action.⁴⁶ Amending these articles would have provided parties with the means to mitigate the harsher domestic effects of the international drug control treaties by allowing each country greater flexibility to account for its specific needs and circumstances.⁴⁷ Permitting signatories to enter a reservation without withdrawing from the Single Convention would have also served to enhance international cooperation in addressing the global drug problem.⁴⁸

Part I of this Note, therefore, discusses the current mechanisms for international drug control, specifically as they relate to restrictions on the coca leaf. It explains the unique position that coca occupies within Bolivian society, focusing on the legal and regulatory history of coca following the nation’s assent to the international drug control treaties. Part I then describes the events that led up to the 2016 UNGASS, the conference’s potential effect on international drug control, and its disappointing result. Part II analyzes the flaws in the current system of international drug control revealed by Bolivian coca policies, and why the 2016 UNGASS

44. See *What Is UNGASS 2016?*, OPEN SOC’Y FOUND., <https://www.opensocietyfoundations.org/explainers/what-ungass-2016> [<https://perma.cc/28B8-4VH9>] (last updated June 2016).

45. Dave Bewley-Taylor & Martin Jelsma, *UNGASS 2016: A Broken or B-r-o-a-d Consensus?*, TRANSNAT’L INST. DRUGS & DEMOCRACY (July 2016), <http://www.undrugcontrol.info/en/un-drug-control/ungass/item/7027-ungass-2016-a-broken-or-b-r-o-a-d-consensus> [<https://perma.cc/QW8A-2FJV>].

46. See Ann Fordham & Martin Jelsma, *Will UNGASS 2016 Be the Beginning of the End for the ‘War on Drugs’?*, OPEN DEMOCRACY (Mar. 16, 2016), <https://www.opendemocracy.net/drugpolicy/ann-fordham-martin-jelsma/will-ungass-2016-be-beginning-of-end-for-war-on-drugs> [<https://perma.cc/L3JB-BK8G>].

47. See discussion *infra* Subsection II.A.

48. See *id.*

should have considered amending the current drug control treaty scheme to account for these, with suggestions for specific changes to the Single Convention. The Note concludes by offering these suggestions for consideration in future discussions on international drug control law and policy.

I. BACKGROUND

A. *The U.N. Drug Control Regime: International Cooperation in Defining and Combating Illicit Substances*

Modern efforts to use international law as a means of combating domestic drug problems began with the 1912 International Opium Convention (IOC), which recognized that resolution of domestic drug problems would also need to be addressed at the international level.⁴⁹ The IOC obligated its signatories “to control the production and distribution of narcotic drugs”⁵⁰ and was overseen by the League of Nations after World War I.⁵¹ Since then, several multilateral conventions, administered by the United Nations, have come to comprise the current system of international drug control.⁵²

There are currently three treaties that form the basis of the international drug control scheme: the 1961 Single Convention, the 1971 Convention on Psychotropic Substances,⁵³ and the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988 Convention).⁵⁴ The overarching principles upon which these treaties are based include concerns “with the health and welfare of mankind” threatened by drug addiction, and the belief that “continuous international co-operation and control” are the best methods to address this problem.⁵⁵ The treaty system is unique in the broad-based support that it

49. See Daniel Heilmann, *The International Control of Illegal Drugs and the U.N. Treaty Regime: Preventing or Causing Human Rights Violations?*, 19 CARDOZO J. INT'L & COMP. L. 237, 240–41 (2011).

50. *Id.* at 241.

51. See *id.* at 242.

52. See *id.* at 239–40.

53. The 1971 Convention on Psychotropic Substances deals with regulation of synthetic drugs, such as methamphetamines, Heilmann, *supra* note 49, at 246, and therefore will not be further addressed in this Note.

54. See *id.* at 248–51.

55. Single Convention on Narcotic Drugs, *supra* note 23, at 106–07; see also United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, pmbl., Dec. 19, 1988, 1582 U.N.T.S. 165 [hereinafter Convention Against Illicit Traffic in Narcotic Drugs] (stating that the parties are “[d]etermined to improve international co-operation in the suppression of illicit traffic by sea”).

receives.⁵⁶ The remainder of this Part focuses on the Single Convention and 1988 Convention in greater detail, with close attention to these instruments' relevance to Bolivian coca.

1. The Foundation of Modern International Drug Control: The 1961 Single Convention

The principal document governing the international drug control system is the 1961 Single Convention, as amended by the 1972 Protocol.⁵⁷ When the Single Convention was ratified in 1961, it "was intended to be the final and definitive document that supersedes all previous treaties."⁵⁸ The Single Convention itself lays out a framework under which international drug enforcement operates: it defines the substances subject to the Single Convention's controls and obliges signatories to undertake certain actions in the domestic sphere to comply with its terms.⁵⁹ The Single Convention is not self-executing, but rather obligates signatories to promulgate domestic laws in conformity with its provisions.⁶⁰

Although not explicitly stated, Article 4 of the Single Convention embodies a "prohibitionist approach" that limits the use of any defined illicit substance to medical and scientific purposes.⁶¹ These banned substances, listed in the schedules at the end of the Single Convention,⁶² include "classic plant-based drugs,"⁶³ like cannabis, opium, heroin, and cocaine. However, the Single Convention goes further than a simple prohibition on the narcotic substance that is the *product* of processing; rather, it places the same limitations on raw, unworked material.⁶⁴ Thus, the Single Convention specifically classifies the coca leaf, as well as the coca bush, as a Schedule I Drug.⁶⁵

56. See Heilmann, *supra* note 49, at 240.

57. See *id.* at 244.

58. *Id.*; see Single Convention on Narcotic Drugs, *supra* note 23, pmb. (stating that the Convention replaces existing treaties).

59. See Heilmann, *supra* note 49, at 244; Single Convention on Narcotic Drugs, *supra* note 23, arts. 2, 4.

60. See, e.g., Single Convention on Narcotic Drugs, *supra* note 23, art. 4 (directing signatories to "take such legislative actions as may be necessary" to comply with the provisions of the convention).

61. Heilmann, *supra* note 49, at 244; see Single Convention on Narcotic Drugs, *supra* note 23, art. 4(c).

62. See Single Convention on Narcotic Drugs, *supra* note 23, scheds. I–IV.

63. Heilmann, *supra* note 49, at 244.

64. See Single Convention on Narcotic Drugs, *supra* note 23, scheds. I–IV.

65. *Id.* sched. I. While all substances classified under any of the schedules are subject to control, substances classified under higher schedules—Schedule I being the highest—are subject to more rigorous controls, such as reporting and licensing requirements, and

The Single Convention goes on to enumerate numerous restrictions on the cultivation and use of coca, based on some foundational distinctions. Article 1 of the Single Convention specifies that “[i]llicit traffic’ means cultivation or trafficking in drugs contrary to the provisions of this Convention.”⁶⁶ It further specifies that “[p]roduction’ means the separation of opium, coca leaves, cannabis and cannabis resin from the plants from which they are obtained.”⁶⁷ Accordingly, under the Single Convention, coca cultivation is considered illicit trafficking, and coca harvesting, illegal narcotics production.⁶⁸ Article 22 of the Single Convention, a “Special Provision Applicable to Cultivation,” stipulates that “[w]henever the prevailing conditions in the country or a territory of a Party render the prohibition of the cultivation of . . . the coca bush . . . the most suitable measure . . . the Party concerned shall prohibit cultivation.”⁶⁹ Assuming a country has not made this determination, permissible cultivation is further limited by the terms of the Convention.⁷⁰

Article 26, titled “The Coca Bush and Coca Leaves,” stipulates that if a country permits coca cultivation (subject to the limitations imposed on cultivation), the same regulatory requirements imposed on the cultivation of the opium poppy apply.⁷¹ However, whereas a national agency is given a four-month deadline to take possession of opium poppy crops,⁷² a national agency must take possession of the coca crop “as soon as possible after the end of the harvest.”⁷³ Furthermore, “[t]he Parties shall so far as possible

restrictions on possession and sale. *See id.* art. 2. Schedule I drugs are therefore to be strictly regulated and “are subject to all measures of control applicable to drugs under this Convention” *Id.* art. 2(1).

66. *Id.* art. 1(1); Hallums, *supra* note 17, at 828.

67. Single Convention on Narcotic Drugs, *supra* note 23, art. 1(t); Hallums, *supra* note 17, at 828.

68. Hallums, *supra* note 17, at 828.

69. Single Convention on Narcotic Drugs, *supra* note 23, art. 22(1). This provision, by itself, would seem to rest discretion with each country to make the determination as to whether prevailing conditions in the country are such that a prohibition on cultivation is warranted. The “shall” language, however, would seemingly demand a prohibition on cultivation once that determination is made. The discretion here appears to be limited to a single determination. *See id.*

70. *See id.* arts. 26–27.

71. *See id.* art. 26. Article 23 of the Single Convention deals with the establishment of national opium agencies, which must be created by countries that permit cultivation of the opium poppy for producing opium. The provisions include obligations to designate areas where the poppy may grow, as well as provisions dealing with how growers are to be licensed. *See id.* art. 23.

72. *Id.* art. 23(2)(d).

73. *Id.* art. 26(1).

enforce the uprooting of all coca bushes which grow wild” as well as “destroy the coca bushes if illegally cultivated.”⁷⁴ Although it stops short of compelling countries to implement an eradication program, the Single Convention suggests, and seems to prefer, eradication.⁷⁵

Under Article 27 of the Single Convention, coca leaves may also be used to prepare a “flavouring agent,” provided the flavoring agent is devoid of alkaloids.⁷⁶ Article 27 further imposes an obligation to provide estimates and other statistical information with respect to coca leaves used to produce a flavoring agent, since these leaves may be exported and used in trade.⁷⁷

Outside of these defined uses and the procedures through which illegal substances may be put to lawful use, the Single Convention commands that signatories adopt domestic legislation that punishes specified activities.⁷⁸ Article 36 provides that parties to the Single Convention adopt measures to “ensure that cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, [and] delivery on any terms whatsoever . . . shall be punishable offences.”⁷⁹ The punishments prescribed for such conduct are required to be “adequate,” and the Single Convention plainly expresses a preference for “imprisonment or other penalties of deprivation of liberty.”⁸⁰ While Article 36 sets the minimum requirements for state legislation to comply with the Single Convention, Article 39 explicitly clarifies that parties are free to impose harsher punishments.⁸¹

While the Single Convention imposes a defined set of obligations upon each signatory, it both severely limits the procedures through which these countries may remain parties to the Single Convention and mitigates the hardships imposed by some of its more severe provisions.⁸² For example, Article 49(1) of the Single Convention permits signatories to enter a temporary reservation that allows for: “(a) the quasi-medical use of opium; (b) opium

74. *Id.* art. 26(2).

75. *See* Hallums, *supra* note 17, at 828.

76. Single Convention on Narcotic Drugs, *supra* note 23, art. 27(1).

77. *Id.* art. 27(2).

78. *See* Heilmann, *supra* note 49, at 244.

79. Single Convention on Narcotic Drugs, *supra* note 23, art. 36(1)(a).

80. *Id.*

81. *Id.* art. 39.

82. *See* Heilmann, *supra* note 49, at 265 (“An increasing number of States, non-governmental organizations and scientists, are concerned that the drug conventions, despite the impact that they carry, are not flexible enough to allow for an individually tailored approach that takes the special socioeconomic features of different states into account.”).

smoking; (c) coca leaf chewing; [or] (d) the use of cannabis . . . for non-medical purposes.”⁸³ Article 49(2) then provides qualifications on the reservations that may be entered pursuant to Article 49(1) and the timelines under which the reservations expire.⁸⁴ Coca leaf chewing is to be abolished in each country within twenty-five years after the Convention takes effect.⁸⁵ Reservations made under Article 49 enter into force without any requirement that they first be approved, but signatories that make such a reservation are bound by reporting provisions.⁸⁶ The Article also imposes an additional restriction, specifying that those substances contemplated by Article 49 must have been both traditional and permitted in that territory as of January 1, 1961.⁸⁷

Article 50 outlines a more permanent, but more demanding, procedure for making a reservation to the Single Convention, which allows signatories to enter reservations outside of those included in the Single Convention,⁸⁸ as long as the reservations conform to the procedures of that Article at the time the party accedes to the treaty.⁸⁹ A country that wishes to become a party to the Single Convention subject to a reservation not otherwise outlined is permitted to do so provided that the state notifies the U.N. Secretary-General and allows for a period of one year during which the other signatories may object to recognition of the reservation.⁹⁰ The reservation is only permitted if, after this one-year period, at least one-third of the parties have not objected.⁹¹

2. Building on the Foundation: Further Restrictions in the 1988 Convention and the Criminalization of the Coca Leaf

Although the Single Convention had imposed adequate regulation on “the lawful production of narcotic drugs,” it had not done enough to address “illicit production.”⁹² Concerned with the rise in global drug production, member states of the United Nations ratified the 1988 Convention.⁹³ The 1988 Convention was designed “to reinforce and supplement the measures provided in

83. Single Convention on Narcotic Drugs, *supra* note 23, art. 49(1).

84. *Id.* art. 49(2).

85. *Id.* art. 49(2)(e).

86. *Id.* arts. 49(3)–(4).

87. *Id.* art. 49(2)(a).

88. *Id.* art. 50(3).

89. *Id.* art. 50(1).

90. *Id.*

91. *Id.*

92. See Heilmann, *supra* note 49, at 248.

93. *Id.* at 248–49.

the Single Convention . . . to counter the magnitude and extent of illicit traffic and its grave consequences.”⁹⁴

To achieve this goal, the 1988 Convention seeks “to promote cooperation among the Parties so that they may address more effectively the various aspects of illicit traffic . . . having an international dimension.”⁹⁵ The 1988 Convention continues the policy established in the Single Convention by obligating signatories to promulgate laws and regulations in conformity with its provisions.⁹⁶ Prior to ratification, however, some parties were concerned that the Convention “could be misused for other political objectives,” that is, “be used to undermine [states’] sovereign rights.”⁹⁷ Article 2 addresses this concern and stipulates that parties “shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.”⁹⁸ The Convention therefore attempted to draw a line between the domestic obligations that it imposed and the ability of other parties to control the implementation of those domestic obligations.⁹⁹

As noted above, the 1988 Convention was designed to reinforce and supplement the provisions of the Single Convention;¹⁰⁰ thus its provisions apply to those substances defined in the Single Convention.¹⁰¹ The coca leaf is therefore subject to the provisions of the 1988 Convention.¹⁰² While the Single Convention focused on defining the substances under its control and compelled parties to legislate to restrict licit uses of these substances,¹⁰³ the 1988 Convention took “an unprecedented stance, [requiring] its Parties to criminalize possession for personal consumption.”¹⁰⁴ The 1988 Convention thus goes further than the Single Convention by

94. Convention Against Illicit Traffic in Narcotic Drugs, *supra* note 55, at 165, 167.

95. *Id.* art. 2(1).

96. *Id.* (“[T]he Parties shall take the necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems.”).

97. Heilmann, *supra* note 49, at 249.

98. Convention Against Illicit Traffic in Narcotic Drugs, *supra* note 55, art. 2(2); Heilmann, *supra* note 49, at 249 (internal quotation marks omitted).

99. *See* Heilmann, *supra* note 49, at 249.

100. Convention Against Illicit Traffic in Narcotic Drugs, *supra* note 55, at 167.

101. *See id.* art. 1(n) (“‘Narcotic drug’ means any of the substances, natural or synthetic, in Schedules I and II of the Single Convention on Narcotic Drugs, 1961 . . .”).

102. Single Convention on Narcotic Drugs, *supra* note 23, sched. I.

103. *See id.* arts. 1–2, 4, 22, 26–27, 36.

104. Kim, *supra* note 14, 565–66; *see* Convention Against Illicit Traffic in Narcotic Drugs, *supra* note 55, art. 3(2).

expressly stipulating that offenses are “punishable,” and compelling parties to classify the offenses as “criminal.”¹⁰⁵ The 1988 Convention does mitigate the harshness of imposing criminal sanctions by permitting parties to prescribe treatment or education as punishment for minor offenses,¹⁰⁶ such as possession for personal consumption.¹⁰⁷ This option, however, is limited to minor offenses; for offenses not considered minor, treatment and education may only be provided “in addition to conviction or punishment.”¹⁰⁸ Moreover, treatment and education as sanctions are not required, but optional,¹⁰⁹ and parties remain free to adopt more severe measures if they are “desirable or necessary.”¹¹⁰

Article 14 of the 1988 Convention, titled “Measures to Eradicate Illicit Cultivation of Narcotic Plants and to Eliminate Illicit Demand for Narcotic Drugs and Psychotropic Substances,” obligates parties to take “appropriate measures” to both prevent illegal cultivation—that which is impermissible under the Single Convention—and to eradicate illicit coca bush cultivation in their territories.¹¹¹ The prevention and eradication measures adopted must “respect fundamental human rights and shall take due account of traditional licit uses, where there is historic evidence of such use.”¹¹² While this respect for human rights and traditional uses may be seen as permitting traditional uses of coca, it is undercut by another provision,¹¹³ which provides that any such measures taken must conform, at minimum, with the requirements of the Single Convention.¹¹⁴ Thus, the traditional use of coca is permitted where there is evidence of traditional use, with the caveat that it be abolished within the twenty-five year term outlined in the Single Convention.¹¹⁵

105. See Heilmann, *supra* note 49, at 249–50. Compare Single Convention on Narcotic Drugs, *supra* note 23, art. 36 (describing trafficking in drugs as a “punishable offense[]”), with Convention Against Illicit Traffic in Narcotic Drugs, *supra* note 55, art. 3 (describing the same as a “criminal offense[]”).

106. See Convention Against Illicit Traffic in Narcotic Drugs, *supra* note 55, art. 3(4)(c); Heilmann, *supra* note 49, at 250.

107. Heilmann, *supra* note 49, at 250.

108. Convention Against Illicit Traffic in Narcotic Drugs, *supra* note 55, art. 3(4)(b).

109. See *id.* arts. 3(4)(b)–(c).

110. *Id.* art. 24.

111. *Id.* art. 14(2).

112. *Id.*

113. See Kim, *supra* note 14, at 566.

114. See Convention Against Illicit Traffic in Narcotic Drugs, *supra* note 55, art. 14(1); Kim, *supra* note 14, at 566.

115. See Kim, *supra* note 14, at 566.

Finally, the 1988 Convention provides for denunciation by a party at any time through written notification to the U.N. Secretary-General.¹¹⁶ The 1988 Convention additionally permits any party to make an amendment by submitting it, with the reasons behind its proposal, to the Secretary-General.¹¹⁷ Any proposed amendment is then communicated to the other parties and, if no party rejects the amendment within twenty-four months, it will be considered accepted, allowing for parties to consent to be bound by it.¹¹⁸ However, if any party rejects a proposed amendment, it becomes significantly more difficult for it to even be considered for adoption.¹¹⁹

B. *A Brief History of the Coca Leaf in Bolivia*

Coca has a long history in Bolivia that is rooted in tradition and indigenous culture.¹²⁰ Long before the arrival of the Spanish, indigenous peoples had used coca leaves for multiple purposes, most notably chewing them “much like other people around the world drink coffee or tea—to increase productivity and stave off hunger while working in the fields.”¹²¹ Bolivians continue to use coca leaves for medicinal and cultural purposes, as well as for their effectiveness in suppressing appetite and treating altitude sickness.¹²² Approximately one-third of Bolivians continue to consume coca.¹²³ With its long history and cultural significance, it is hardly surprising that by the late 1990s, “Bolivia’s . . . coca industry [had] amass[ed] a strength rivaled only by international demand for coca and cocaine.”¹²⁴

Coca in Bolivia becomes problematic to the extent that Bolivia’s international treaty obligations conflict with longstanding cultural practices, resulting in domestic law that is both unpopular and of dubious efficacy.¹²⁵ “Because the coca leaf serves as the base for cocaine, the international community has taken steps to curb its production,”¹²⁶ but Bolivia has sought for years to distinguish

116. Convention Against Illicit Traffic in Narcotic Drugs, *supra* note 55, art. 30(1).

117. *Id.* art. 31(1).

118. *Id.*

119. *See id.* art. 31(2).

120. *See* Guidi, *supra* note 13.

121. *Id.*

122. Hallums, *supra* note 17, at 823.

123. Guidi, *supra* note 13.

124. Hallums, *supra* note 17, at 821.

125. *See* Kim, *supra* note 14, at 559–60, 562–63.

126. *Id.* at 562.

between coca consumed in its raw form and cocaine.¹²⁷ The most important distinction between the natural coca leaf and processed cocaine is that the leaf, as traditionally consumed, is not harmful to human health in the same way as other drugs.¹²⁸ This push and pull between Bolivian culture, on the one hand, and the international community's interest in reducing the quantity of raw materials available for use in drug production, on the other, has given rise to a turbulent history both internationally and domestically.¹²⁹ The remainder of this Section discusses the treatment of Bolivian coca law and policy from the signing of the Single Convention up to the present.

1. Domestic Bolivian Coca Legislation in the Post-Single Convention World

After ratification of the 1961 Single Convention, Bolivia passed a 1962 narcotics law, from which coca was conspicuously absent, "perhaps signifying resistance to international concern over coca."¹³⁰ However, during the 1960s, the Bolivian government did eventually begin to implement domestic policies aimed at reducing coca leaf chewing, halting the use of coca in cocaine production, and "gradually eradicat[ing] coca plantations by replacing coca with other crops."¹³¹

As cocaine use in the United States increased in the mid-1970s, Bolivia began to receive increasing aid from the United States in an effort to fight cocaine trafficking.¹³² A new domestic law was passed in 1979 that further sought to fight illegal cocaine production with a prohibition on new coca plantations and expansion of a registration program for existing plantations.¹³³ In 1981, Bolivia passed a law that attempted to reduce coca cultivation through a program of crop substitution.¹³⁴ This law additionally established a state monopoly, imposing restrictions on the purchase and sale of coca leaves,¹³⁵ as had been required by Article 26 of the Single Convention.¹³⁶ These efforts had very little impact on Bolivian

127. *See id.* (describing alkaloid extraction and processing to produce cocaine).

128. *See id.* at 559.

129. *See* Guidi, *supra* note 13.

130. Hallums, *supra* note 17, at 828.

131. *Id.* at 829.

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.* at 830.

136. *See* Single Convention on Narcotic Drugs, *supra* note 23, art. 26.

coca cultivation and, in 1985, the government finally passed domestic regulations that “recognized all drugs listed in the 1961 [Single] Convention, including coca plants and leaves.”¹³⁷ Overall, however, this domestic legislation was essentially ineffective in reducing the quantity of coca in cultivation.¹³⁸ During this time period, international concern with global drug use continued to grow, especially with “illegal cocaine production in the Andean countries” such as Bolivia.¹³⁹

In response to these growing concerns, the U.N. General Assembly put forward the 1988 Convention.¹⁴⁰ Bolivia signed on to the 1988 Convention but, in doing so, “attempted to mitigate what it deemed to be the harsh verbiage of the Single Convention by making a reservation . . . 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.”¹⁴¹ However, because the terms of the Single Convention remained binding even after the promulgation of the 1988 Convention, Bolivia was in a position whereby it would not refer to users of coca leaves as criminals, but was still bound to do away with coca leaf chewing by 1989.¹⁴²

2. Increased Regulations and Restrictions on Coca: *Ley 1008*

The 1988 Convention, with Bolivia’s reservation, did not enter into force with respect to Bolivia until 1990.¹⁴³ However, even as the 1988 Convention was being finalized,¹⁴⁴ the Bolivian legislature promulgated the *Ley del Regimen de la Coca y Sustancias Controladas* on July 19, 1988.¹⁴⁵ Known in English as the Coca and Controlled Substances Law, and better known in both languages as *Ley 1008*, the law was written with assistance from the United States.¹⁴⁶ Concerned with its own domestic cocaine problem, U.S. assistance in drafting *Ley 1008* focused primarily on criminalizing drug traffick-

137. Hallums, *supra* note 17, at 830.

138. *Id.*

139. Heilmann, *supra* note 49, at 249.

140. *Id.*

141. Kim, *supra* note 14, at 565–66.

142. *Id.* at 566–67.

143. Convention Against Illicit Traffic in Narcotic Drugs, *supra* note 55, at 165 n.1 (listing dates of entry into force).

144. *See id.*

145. *Ley del Regimen de la Coca y Sustancias Controladas*, INFOLEYES BOLIVIA (July 19, 1988), http://www.fiscaliadechile.cl/observatoriodrogaschile/documentos/legislacion/Ley_N_1.008_Ley_del_Regimen_Coca_bolivia.pdf [<https://perma.cc/Q32F-FD3V>] [hereinafter *Ley 1008*].

146. Hallums, *supra* note 17, at 830.

ing and, more importantly, eliminating coca cultivation.¹⁴⁷ *Ley 1008*, “enacted largely in response to U.S. pressure to prohibit the production and marketing of coca,” did, however, “formally recognize[] the licit uses of the coca leaf.”¹⁴⁸

Article 1 of *Ley 1008* provides that coca “constitutes a natural product” of the subtropical regions of the La Paz and Cochabamba departments, both in its wild form and as an agricultural product, with its roots in pre-Columbian Bolivian history.¹⁴⁹ The law further recognizes, in Article 2, that coca cultivation is traditionally legal and oriented towards consumption and use in medicine and rituals of the Andean peoples.¹⁵⁰ Perhaps most significantly—in particular because the United States had a hand in its drafting—*Ley 1008* establishes a legal difference between “coca in its natural state, which does not produce harmful effect to human health, and coca [*iter criminis*,] which is the leaf in the process of chemical transformation that isolates cocaine alkaloid and that produces harmful psychophysical and biological effects on human health and is used criminally.”¹⁵¹ The legislation thus recognizes as legal consumption the social and cultural practices of chewing the leaf and its ritual and medicinal uses.¹⁵² *Ley 1008* defines production of the coca leaf to cover the demand for legal uses and consumption as “necessary production”;¹⁵³ that which exceeds what is necessary is surplus.¹⁵⁴ The use or production of coca for the purpose of creating cocaine base, or cocaine, or any other controlled substance is illegal use.¹⁵⁵

Ley 1008 established three zones for coca production in Bolivia¹⁵⁶: the traditional production zone, where production is limited to necessary production as established under Articles 4 and 5;¹⁵⁷ the surplus or excess production zones, wherein production is subject to annual reduction, substitution, and development plans;¹⁵⁸ and illicit production zones, which are defined as those zones of production that are not traditional or surplus zones, and

147. *Id.*

148. *Id.*

149. *Ley 1008*, art. 1; Hallums, *supra* note 17, at 830.

150. *Ley 1008*, art. 2; Hallums, *supra* note 17, at 830.

151. *Ley 1008*, art. 3; Hallums, *supra* note 17, at 830–31.

152. *Ley 1008*, art. 4; Hallums, *supra* note 17, at 831.

153. *Ley 1008*, art. 6; Hallums, *supra* note 17, at 831.

154. *Ley 1008*, art. 6; Hallums, *supra* note 17, at 831.

155. *Ley 1008*, art. 7.

156. *Id.* art. 8.

157. *Id.* art. 9.

158. *Id.* art. 10.

wherein coca cultivation is prohibited and subject to obligatory eradication without any type of compensation.¹⁵⁹ In practice, *Ley 1008* authorized coca cultivation in approximately forty-six square miles in the Yungas traditional zone, but otherwise required substitution or destruction of the crop.¹⁶⁰

Any legal coca cultivation¹⁶¹ is also subject to a government registration program that prohibits increases in the size of the crop.¹⁶² The legislation further assigns the executive branch broad regulatory authority over legal coca cultivation, including the responsibility to regulate the routes for transporting coca to market.¹⁶³

In addition, *Ley 1008* alters the normal rules of criminal procedure, creating “a separate system of justice that has sole jurisdiction over narcotics offenses,” and provides for expedited process for these offenses.¹⁶⁴ These special narcotics rules can be harsh and apply more or less indiscriminately once a narcotics offense is involved.¹⁶⁵ Noted one observer, “[a]utomatic pre-trial incarceration, coupled with mandatory sentencing provisions, allows prosecutors and judges almost no discretion in the prosecution of drug offenders.”¹⁶⁶

Other provisions oblige landlords with knowledge of illegal coca cultivation or cocaine manufacture on their premises to report it to the appropriate authorities; nonreporting can be punished with a penalty of three to five years in prison and confiscation of the property.¹⁶⁷ Unsurprisingly, *Ley 1008* was not well-received by Bolivian citizens. Because the United States both advocated its adoption and conditioned financial support on the continuation of coca eradication, it became known as the *Ley de Extranjeros*, or “Law of Foreigners.”¹⁶⁸ Due in large part to its lack of popularity and the Bolivian government’s difficulty in enforcing its provisions in the face of opposition, the law appears not to have ever been fully implemented.¹⁶⁹

159. *Id.* art. 11.

160. FARTHING & LEDEBUR, *supra* note 3, at 16.

161. Under *Ley 1008*, any legal coca cultivation must take place in either the traditional or surplus production zones. See *supra* text accompanying notes 154–157.

162. *Ley 1008*, *supra* note 145, art. 16.

163. See *id.* art. 19.

164. Hallums, *supra* note 17, at 832.

165. See *id.*

166. *Id.*

167. *Ley 1008*, *supra* note 145, art. 60.

168. See Hallums, *supra* note 17, at 835.

169. See *id.* at 834.

3. Repression and Reprieve: Coca Regulation in Bolivia, 1997 to Present

In the decades following its ratification of the Single Convention, the increasing intensity with which the Bolivian government approached coca cultivation culminated with the adoption of *Plan Dignidad* in 1997.¹⁷⁰ *Plan Dignidad* attempted to eliminate coca cultivation in the Chapare region (illicit or surplus production zone under *Ley 1008*) by 2002.¹⁷¹ The result of *Plan Dignidad* was “a severe economic crisis among growers, who were only eligible for development assistance after losing their main source of income.”¹⁷² In response, the coca growers “vehemently resisted the initiative” and a de facto armed conflict took shape in the region between the government eradication forces, on one side, and the coca farmers, on the other.¹⁷³ During the intermittent clashes between government forces and coca farmers, thirty-three Chapare coca growers were killed, with an additional 570 injured.¹⁷⁴ No legal repercussions resulted from these deaths; nobody was held responsible.¹⁷⁵ In retaliation, the coca growers attacked police and military forces who attempted to carry out *Plan Dignidad*, killing twenty-seven members of the government’s forces.¹⁷⁶

National protests resulting from these clashes critically destabilized the Bolivian government.¹⁷⁷ This instability set the stage for the election of Evo Morales, the leader of the protesting coca growers union, as the president of Bolivia in 2005.¹⁷⁸ Upon taking office in 2006, Morales began to assert a more independent policy from that advocated by the United States.¹⁷⁹ In 2008, Morales expelled both the U.S. ambassador and the DEA from Bolivia “and embarked on his own strategy of combating drug trafficking, acknowledging the traditional uses of coca in Bolivian culture and working cooperatively with coca growers to regulate some legal activity and to promote alternative development elsewhere.”¹⁸⁰ In 2009, modifications to the Bolivian Constitution came into effect,

170. See FARTHING & LEDEBUR, *supra* note 3, at 16–17.

171. See *id.* at 17.

172. *Id.*

173. *Id.*

174. *Id.*

175. See *id.*

176. *Id.*

177. See Grim & Wing, *supra* note 10.

178. See Guidi, *supra* note 13; Grim & Wing, *supra* note 10.

179. FARTHING & LEDEBUR, *supra* note 3, at 20.

180. Grim & Wing, *supra* note 10; see FARTHING & LEDEBUR, *supra* note 3, at 20.

with a provision that designates “native coca a ‘cultural patrimony’ and asserts that natural coca is not a narcotic.”¹⁸¹ Traditional use of the coca leaf, particularly coca chewing, was also legally recognized as a traditional custom.¹⁸²

Morales thereafter implemented an alternative strategy for the regulation, control, and reduction of the coca crop.¹⁸³ The plan seeks to achieve its objectives by providing development assistance to farmers without requiring coca eradication; investing in public works and social services, as well as in economic and agricultural development; and taking account of local needs, all while respecting human rights.¹⁸⁴

One of the cornerstones of the policy is its reliance on the community itself to implement the government’s regulatory goals.¹⁸⁵ The program functions by continuing and expanding the process of legalizing growing small quantities of coca.¹⁸⁶ Known as the *cato* system, it encourages “growers to exercise informal and internal controls through unions” to limit cultivation to legal quantities.¹⁸⁷ The *cato* system “prioritizes collective over individual rights and moderates potential tension between communities and the government.”¹⁸⁸ To complement the more community-based approach, the Bolivian government also employs farmer registry and identification cards, use of satellite imaging to monitor the amount of coca cultivation in the region, a program of licensing coca merchants, and promotion of the production of alternative coca products.¹⁸⁹

The United States, however, vehemently opposed these changes, viewing an expanded coca-growing program as an invitation to narcotics manufacturers to produce an increased amount of cocaine.¹⁹⁰ Even prior to Morales assuming the presidency in 2006, and before any new, alternative coca policy had been put into place, U.S. officials expressed pessimistic views concerning the future of coca in Bolivia.¹⁹¹ In March 2004, General James T.

181. Kim, *supra* note 14, at 568.

182. *Id.*

183. See FARTHING & LEDEBUR, *supra* note 3, at 20.

184. See *id.* at 20–21.

185. See *id.* at 23–24.

186. *Id.* at 9, 24.

187. *Id.* at 24.

188. *Id.*

189. See *id.* at 29–33.

190. See Grim & Wing, *supra* note 10; see also Regalado, *supra* note 25 (describing the increase in Bolivia’s coca production).

191. See Grim & Wing, *supra* note 10.

Hill,¹⁹² speaking about Morales, told the U.S. House Armed Services Committee that “[i]f radicals continue to hijack the indigenous movement, we could find ourselves faced with a narcostate that supports the uncontrolled cultivation of coca.”¹⁹³

Relations between the Morales government and the United States continued to deteriorate following the 2008 expulsion of the DEA from Bolivia, whereupon the agency, operating from Paraguay, secretly indicted individuals within the Morales administration “in an apparent effort to undermine his leadership.”¹⁹⁴ The U.S. government, in a September 2015 press release, continued to view Morales as a threat to the United States’ own drug policies, identifying Bolivia as a country that has “failed demonstrably during the previous [twelve] months to adhere to [its] obligations under international counternarcotics agreements.”¹⁹⁵ As a consequence, the United States would withhold from Bolivia funds that would ordinarily be given to support the country’s drug control efforts.¹⁹⁶

Opposition from the United States notwithstanding, recent statistics have validated Bolivia’s approach to coca regulation.¹⁹⁷ As the *Huffington Post* reported in 2015, “In the face of U.S. denunciations that Bolivia would become a narcostate under Morales, the country has instead managed to reduce coca leaf cultivation, especially over the past five years.”¹⁹⁸ The U.N. Office on Drugs and Crime (UNODC) reported that “total production of dried coca leaf fell [eleven] percent from 2013 to 2014, and has fallen by an average of nearly [ten] percent each year since 2011.”¹⁹⁹ Confisca-

192. General Hill was the Combatant Commander, U.S. Southern Command, at the time he testified before the House Armed Services Committee. See *Biography*, J T HILL GROUP INC., <http://thejthillgroup.com/bio.htm> [<https://perma.cc/L72Q-BUEL>] (last visited Apr. 1, 2017); see Grim & Wing, *supra* note 10.

193. See Grim & Wing, *supra* note 10 (internal quotation marks omitted).

194. *Id.*

195. White House Press Release, *supra* note 34.

196. Grim & Wing, *supra* note 10. Interestingly (and revealingly), while the United States has disparaged Bolivia for its coca policies, two of the United States’ closest allies in the War on Drugs in Latin America, Colombia and Peru, despite praise from the U.S. government for “highly effective leadership in countering illegal drug trafficking and transnational crime,” have seen an increase in coca cultivation, even under their national eradication plans. See Simeon Tegel, *Peru’s Booming Cocaine Business Is Turning It into Latin America’s Newest Narco State*, VICE NEWS (Feb. 9, 2016), <https://news.vice.com/article/perus-booming-cocaine-business-is-turning-it-into-latin-americas-newest-narco-state> [<https://perma.cc/E8RM-A7LC>]; White House Press Release, *supra* note 34.

197. Grim & Wing, *supra* note 10.

198. *Id.*

199. *Id.*; see 2014 Bolivia Survey Reports Decline in Coca Cultivation for Fourth Year in a Row, U.N. OFF. ON DRUGS AND CRIME, <https://www.unodc.org/unodc/en/frontpage/2015/>

tions of cocaine did rise following Bolivia's expulsion of the DEA in 2008;²⁰⁰ cocaine reduction, however, was never the point of Bolivia's coca policy. Rather, "Bolivia's initiative seeks primarily to reduce harm to coca growers by substituting the police- and military-driven forced eradication model with one that actively engages growers as citizens."²⁰¹

Even having met some success,²⁰² Bolivia's new coca laws and policies put the state squarely in violation of its obligations under the drug treaties.²⁰³ The provisions of the Single Convention remained in effect, binding Bolivia.²⁰⁴ This was problematic, particularly with regard to its obligations to abolish coca leaf chewing.²⁰⁵ As a consequence, Bolivia pursued a policy attempting to differentiate coca in its pure form from cocaine within the context of international law.²⁰⁶ In furtherance of this policy, Bolivia proposed an amendment to the Single Convention that would have removed those portions requiring the abolition of coca leaf chewing.²⁰⁷ In support of its proposed amendments, Bolivia argued that traditional use of the coca leaf was not actually drug use and that Article 49, which outlawed coca leaf chewing, "violated the United Nations Declaration on the Rights of Indigenous Peoples."²⁰⁸ The proposed amendments, however, were met with opposition and therefore did not take effect, at least partly "due to concern that passage of the amendment could compromise the integrity of the [Single] Convention and encourage future Parties to take similar measures."²⁰⁹

With the failure of its proposed amendments, Bolivia submitted its notice to withdraw from the Single Convention, which took effect on January 1, 2012.²¹⁰ On December 29, 2011, Bolivia gave notice that it would re-accede to the Single Convention, contingent

August/2014-bolivia-survey-reports-decline-in-coca-cultivation-for-fourth-year-in-a-row.html [https://perma.cc/5HE2-VDB8] (last visited Apr. 1, 2017).

200. Grim & Wing, *supra* note 10.

201. FARTHING & LEDEBUR, *supra* note 3, at 11.

202. See *supra* text accompanying notes 197–200.

203. See Kim, *supra* note 14, at 565.

204. See *id.* at 564–65.

205. See Single Convention on Narcotic Drugs, *supra* note 23, arts. 49(1)(c), 49(2)(e). Coca remains classified as a Schedule I drug. *Id.* sched. I; Kim, *supra* note 14, at 564–65.

206. See FARTHING & LEDEBUR, *supra* note 3, at 31 (explaining that coca leaf chewing is an important part of indigenous people's health and cultural practices).

207. Kim, *supra* note 14, at 571.

208. *Id.*

209. *Id.*

210. *Id.* at 572.

upon acceptance of a reservation, pursuant to Article 50(3).²¹¹ Bolivia was thereafter required to wait one year to be re-admitted as a signatory, but only if one-third of the Parties failed to object to its reservation.²¹² The reservation was accepted, with fifteen countries objecting before the January 10, 2013 deadline.²¹³ Bolivia's re-accession entered into force with its reservation on February 10, 2013, bringing its coca chewing policy into compliance with international law.²¹⁴

C. *The Role of International Government in Shaping International Drug Policy*

As the history of implementation of the international drug control treaty scheme in Bolivia demonstrates, the treaties did not resolve the problems inherent in the international trade in illegal drugs.²¹⁵ As one observer noted, "Although during the 1990s law enforcement measures based on the international drug control system had been successfully employed in the dismantling of some of the most notorious drug cartels (e.g., the Cali and Medellin cartels), global drug abuse did not, as had been hoped for, decrease."²¹⁶ Though the current treaty system addresses different concerns through multiple documents, the documents in general share the same underlying policy of protecting human health and welfare through international cooperation.²¹⁷ However, these treaties also share similar methodologies—and similar undesired consequences—which has sparked criticism.²¹⁸ In 1998, the U.N. General Assembly attempted to once again address the global drug problem, this time convening a Special Session of the General

211. *Id.*; see also *Bolivia to Re-Accede to UN Drug Convention*, *supra* note 14 (further discussing Bolivia's re-accession to the Single Convention).

212. Kim, *supra* note 14, at 572.

213. *Bolivia to Re-Accede to UN Drug Convention*, *supra* note 14 (noting that it would have required objections by sixty-one of the one-hundred eighty-three parties to the Convention to prevent Bolivia's reservation from taking effect).

214. *See id.*

215. *See* Heilmann, *supra* note 49, at 251.

216. *Id.*

217. *Compare* Single Convention on Narcotic Drugs, *supra* note 23, at 106–07 (stating that the parties are concerned "with the health and welfare of mankind" and calling for international cooperation to combat the drug problem), *with* Convention Against Illicit Traffic in Narcotic Drugs, *supra* note 55, at 165–66 (stating that the parties to the convention are "[d]eeply concerned" with the increase in production and demand for drugs, "which pose[s] a serious threat to the health and welfare of human beings" and calling for international cooperation).

218. *See, e.g.,* *What Is UNGASS 2016?*, *supra* note 44; Heilmann, *supra* note 49, at 238.

Assembly (1998 UNGASS).²¹⁹ The 1998 UNGASS focused on increased international cooperation between member states and produced “a Declaration on the Guiding Principles of Drug Demand Reduction, a Political Declaration, and various action plans” with this goal in mind.²²⁰

The Declaration on the Guiding Principles of Drug Demand Reduction began by recognizing that “[a]ll countries are affected by the devastating consequences of drug abuse and illicit trafficking,” which included, among other things, “the undermining of political, cultural, social and economic structures.”²²¹ Accordingly, the nations of the U.N. General Assembly committed to invest in demand reduction programs, promote interregional and international cooperation, and “adopt measures as provided for in . . . the [1988 Convention].”²²² While important “for linking, for the first time, the illicit production and trafficking of drugs with terrorism and arms trafficking,” the results of the 1998 UNGASS were quite limited.²²³

1. Great Debate: How Effective Are the Drug Control Treaties?

In overseeing the international drug control treaties, the United Nations has relied on a two-step approach to combating drugs globally: reduction of the supply at one end, and reduction of demand at the other.²²⁴ The UNODC contends that “further progress in these two areas would affect the intermediate stage: . . . it would curtail the drug trade.”²²⁵ There is, however, debate with regards to the overall effectiveness of international drug control treaties in achieving their purposes, especially with respect to the unintended or unforeseen consequences that they have had on the global drug market.²²⁶ The UNODC itself identified several of these consequences, which include, among others: development of a large black market for drugs, increased use of available funds for

219. Heilmann, *supra* note 49, at 251.

220. *Id.*

221. G.A. Res. 20/3, ¶ 1, annex, Declaration on the Guiding Principles of Drug Demand Reduction (Sept. 8, 1998).

222. *Id.* ¶ 7.

223. Heilmann, *supra* note 49, at 252.

224. See G.A. Res. 20/3, *supra* note 221, ¶ 8(a).

225. U.N. OFF. ON DRUGS AND CRIME, POLITICAL DECLARATION AND PLAN OF ACTION ON INTERNATIONAL COOPERATION TOWARDS AN INTEGRATED AND BALANCED STRATEGY TO COUNTER THE WORLD DRUG PROBLEM 2 (Mar. 11–12, 2009), https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_52/Political-Declaration2009_V0984963_E.pdf [<https://perma.cc/JS2F-X99N>].

226. See Heilmann, *supra* note 49, at 267–68; *What Is UNGASS 2016?*, *supra* note 44.

police activities at the expense of public health measures, and the present, prohibitionist approach to dealing with illegal drug users.²²⁷

Critics outside of the United Nations contend that, as they are currently written and administered, the treaties place too much emphasis “on criminalization and punishment and not enough on education and harm reduction.”²²⁸ At the core of this criticism lies the belief that the treaties, with their emphasis on punishment and deterrence, have been largely ineffective, and have “led to public health crises, mass incarceration, corruption, and black market-fueled violence.”²²⁹ Predictably, a growing group of individuals and international actors, including “States, non-governmental organizations and scientists,” have begun to assert that the drug control treaty scheme is not sufficiently flexible to account for the different needs and realities of individual countries.²³⁰ These critics instead advocate for policies that focus more on rehabilitation and management instead of punishment.

For example, Open Society Foundations, a nonprofit organization committed to advocating for more open, democratic societies throughout the world,²³¹ discusses a successful example of a Swiss program implemented in the 1990s to combat its heroin problem, which featured “health services such as heroin prescription, supervised consumption rooms, and community-based treatment.”²³² In response, the International Narcotics Control Board²³³ (INCB) “rather than lauding these successes, . . . accused the Swiss government of ‘aiding and/or abetting the commission of crimes involving illegal drug possession and use, as well as other criminal offences, including drug trafficking.’”²³⁴ The INCB expressed similar sentiments in response to Uruguay’s experimental cannabis legislation.²³⁵ On the other hand, responses to the introduction of

227. See Heilmann, *supra* note 49, at 268.

228. *Id.* at 238; see *What Is UNGASS 2016?*, *supra* note 44.

229. *What Is UNGASS 2016?*, *supra* note 44.

230. Heilmann, *supra* note 49, at 265.

231. *History*, OPEN SOC’Y FOUND., <https://www.opensocietyfoundations.org/about/history> [<https://perma.cc/7WK3-9Q5L>] (last visited Apr. 1, 2017).

232. *What Is UNGASS 2016?*, *supra* note 44.

233. The International Narcotics Control Board was established pursuant to the 1961 Single Convention on Narcotic Drugs and serves as “the monitoring body for the implementation of the Single Convention.” Heilmann, *supra* note 49, at 255; see also *Single Convention on Narcotic Drugs*, *supra* note 23, arts. 9, 14 (describing the composition and functions of the INCB, and measures by the INCB to ensure the execution of the Convention’s provisions).

234. *What Is UNGASS 2016?*, *supra* note 44.

235. See *id.*

harsher drug laws generally meet with INCB approval.²³⁶ Bulgaria provides one such example: after the country introduced harsh legislation punishing minor drug possession with comparatively lengthy prison sentences, the INCB lauded the state's "political commitment and the will to deal with drug abuse."²³⁷ Open Society Foundations argues that these sorts of responses, that is, negative reactions to novel approaches and praise for tough criminal sanctions, have the effect of stifling change or innovation.²³⁸

Others, however, maintain "that the drug control conventions do not contain provisions that bind Member States to certain compliance actions without granting them sufficient leeway for implementing individually tailored policies."²³⁹ Daniel Heilmann, writing on the subject of human rights violations resulting from drug control policies, maintains that "the most troublesome measures on the domestic level are arguably carried out outside the mandatory framework of the conventions."²⁴⁰ More broadly, outside of the human rights context, the U.S. White House recently stated that "the [U.N.] drug-control conventions are resilient enough to unify countries that often hold divergent views about the international narcotics problem," and further that the drug conventions "allow sovereign nations the flexibility to develop and adapt the most appropriate policies and programs in keeping with their own national circumstances, while also achieving the conventions' aims."²⁴¹ Both sides of the debate, however, recognize problems within the current control system and the need to address them.²⁴²

2. High Hopes and the Political Reality of 2016 UNGASS

The 2016 UNGASS took place from April 19–21, 2016, in New York.²⁴³ Although a conference to address the international drug problem was originally scheduled to take place in 2019, in 2012 several Central American countries joined together to request that the United Nations convene the conference early.²⁴⁴ In response, the U.N. General Assembly passed a resolution to convene the

236. *See id.*

237. *Id.* (internal quotation marks omitted).

238. *See id.*

239. Heilmann, *supra* note 49, at 267.

240. *Id.*

241. White House Press Release, *supra* note 34.

242. *See supra* text accompanying notes 224–227.

243. *What Is UNGASS 2016?*, *supra* note 44.

244. *See UNGASS 2016*, *supra* note 42.

UNGASS in 2016, stating that it was “[g]ravenly concerned that, despite continuing increased efforts . . . , the world drug problem continues to constitute a serious threat to public health and safety and . . . [to] socioeconomic and political stability.”²⁴⁵ While the previous UNGASS resulted in Political Declarations and Action Plans that had little real-world impact,²⁴⁶ Open Society Foundations claimed that the 2016 UNGASS would be different because “[n]ever before have so many governments voiced displeasure with the international drug control regime.”²⁴⁷

The possibility for reform was, however, only that: a possibility.²⁴⁸ Newspapers reported that “fault lines were opening up in the globally agreed position on drug control.”²⁴⁹ On one side, instead of revisiting the same policies and making similar promises, several countries urged that “the ‘war on drugs’ . . . be seen in a different light, which places greater emphasis on treating drug consumption as a public health problem, rather than a criminal justice matter.”²⁵⁰ On the other side, the United States seemed unwilling to abandon the prohibitionist approach and appeared likely to block any measures to break with current policy.²⁵¹

Latin American countries plagued by drug crimes, including Colombia, Guatemala, and Mexico, “have become increasingly critical of the UN’s prohibition stance, claiming that maintaining the status quo plays into the hands of the cartels and paramilitary groups.”²⁵² The U.S. White House, while admitting that there is still much work to be done in addressing international drug control, stated in a press release that the purpose of the 2016 UNGASS would be “to assess the successes and shortcomings of drug policy and to identify ways to meet new challenges in the future.”²⁵³ The press statement continued, “[t]he UNGASS is an opportunity to improve and develop international drug-control policies, in particular with regard to (1) increasing international efforts to address the world drug problem from a public health perspective; (2) sharing best practices in criminal justice reform; and (3) strengthening

245. G.A. Res. 67/193, at 2, International Cooperation Against the World Drug Problem (Apr. 23, 2013).

246. See Heilmann, *supra* note 49, at 251–52.

247. *What Is UNGASS 2016?*, *supra* note 44.

248. See *id.*

249. Doward, *supra* note 41.

250. *Id.*

251. See White House Press Release, *supra* note 34.

252. Doward, *supra* note 41.

253. White House Press Release, *supra* note 34.

international law enforcement cooperation.”²⁵⁴ Negotiations were still ongoing leading up to the 2016 UNGASS, and several countries “played hardball,” all but foreclosing any broad policy change: “bureaucratic machinations, political complacency, and exclusion seem[ed] to rule the process.”²⁵⁵

Ultimately, pessimistic predictions about the outcome of the 2016 UNGASS proved to be accurate.²⁵⁶ Instead of proposing deeper changes to the international drug control regime, the process and outcome of the 2016 UNGASS served to underscore the growing divide between different member states on matters relating to drug control.²⁵⁷ While those involved in preparing for the 2016 UNGASS received suggestions and input for meaningful, substantive changes to the drug control system from a variety of sources, “the Vienna-dominated UNGASS preparatory process suppressed discussion that questioned the existing architecture of the UN drug control system.”²⁵⁸ The end result of the 2016 UNGASS was essentially more of the same; no real, substantive change could be agreed upon and instead the issue of international drug policy reform has been put off, at least until 2019, when the United Nations will have its next high-level meeting to address the subject.²⁵⁹

II. ANALYSIS

Viewing the above history of international drug control through the lens of Bolivia’s evolving coca control law and policies, this Part discusses the problems inherent in the Single Convention and several proposals for their resolution.

A. *Inherent Flaws in the Single Convention’s Approach to Drug Control*

The history of Bolivia’s international treaty obligations concerning coca and the intersection of those obligations with domestic law and policy could have provided a special lesson for the member states at the 2016 UNGASS,²⁶⁰ specifically regarding two interrelated problems with the current international drug control treaty

254. *Id.*

255. Fordham & Jelsma, *supra* note 46.

256. See Bewley-Taylor & Jelsma, *supra* note 45.

257. *Id.*

258. *Id.*

259. *Id.*

260. See generally discussion *supra* Subsection I.A.1 (discussing the Single Convention).

system. First, Bolivia has struggled with the prohibitionist approach to drug control,²⁶¹ which is reinforced and compounded by international pressure to adopt more restrictive domestic laws.²⁶² Second, Bolivia has made an explicit commitment to international cooperation in combating illegal drugs²⁶³ that, in practice, means cooperation in the prohibition of drugs and their main ingredients, rather than cooperation aimed at the control of these substances, in contravention of Bolivia's preferred domestic policy.²⁶⁴ These interlocking deficiencies have helped perpetuate the current drug control system and stifled new ways of approaching the world's drug problem.²⁶⁵

The prohibitionist approach, backed by the United States, served as the ideological foundation upon which Bolivian coca control policies were built prior to the election of President Evo Morales.²⁶⁶ Prohibition reached its culmination in the form of the "forced military eradication" of *Plan Dignidad*, also substantially supported by the United States.²⁶⁷ After national protests followed violent clashes between the military and coca growers, leading to the election of Evo Morales as president, it became clear that a prohibitive approach to coca regulation was fundamentally at odds with the lives, culture, and traditions of indigenous Bolivians.²⁶⁸ More broadly speaking, this failure of Bolivian coca eradication programs reveals that the prohibitive approach of the Single Convention can be blind to the specific needs of individual countries, obligating them to take action that is not in the national interest.²⁶⁹

The second flaw revealed by Bolivia's coca control history is that international cooperation is limited, as a matter of common practice, to cooperation in achieving prohibition, rather than cooperation in limiting drugs through more focused control and regulation of the ingredients and processes used to create them. This became most evident following Morales' election and adop-

261. See *supra* text accompanying note 61.

262. See *supra* text accompanying notes 232–238.

263. See *supra* text accompanying notes 55, 217–222 (discussing international cooperation as the means through which to combat illegal drugs).

264. See *supra* text accompanying notes 206–209 and 231–240.

265. See *supra* text accompanying notes 231–237.

266. See generally discussion *supra* Subsection I.B.3 (discussing coca regulation in Bolivia).

267. FARTHING & LEDEBUR, *supra* note 3, at 17; see *supra* text accompanying notes 170–171.

268. See *supra* text accompanying notes 172–178.

269. See *supra* text accompanying notes 170–176 (discussing the implementation of *Plan Dignidad* and the resulting consequences).

tion of the current liberalized coca policies.²⁷⁰ Given the political instability and human rights violations that resulted from prior government policy, the hostile international reception to Bolivia's new domestic coca laws—particularly from the United States—was not warranted.²⁷¹ When faced with nontraditional methods such as Bolivia's, both the United Nations and the United States treat deviation from the standard as the equivalent of surrender to the inevitability of drug trafficking.²⁷²

Thus, having identified these two major flaws in the international drug control scheme,²⁷³ the question naturally arises of how to address these problems in a way that is both effective and politically feasible given the growing disagreement within the international community.²⁷⁴ The following Section attempts to answer this question.

B. *Proposed Solutions to the Problems of the International Drug Control Regime: Amendments to Articles 49 and 50(3) of the Single Convention*

While it would have been a victory for drug reform if the 2016 UNGASS had been able to address the above issues, the lackluster results of the 2016 UNGASS demonstrate the need for additional consensus-building.²⁷⁵ The member states should therefore, at a minimum, adopt the suggestion made by Ann Fordham²⁷⁶ and Martin Jelsma²⁷⁷ and resolve to create “an advisory group or an expert panel to think through different scenarios for the future evolution of the system.”²⁷⁸ This advisory panel should be adequately empowered to investigate a wide array of solutions to the

270. See *supra* text accompanying notes 180–189 (discussing the provisions of the current coca control policies in Bolivia).

271. See *supra* text accompanying notes 190–196.

272. See *supra* text accompanying notes 190–196 and 231–238.

273. The flaws are a rigid focus on prohibition and a commitment to cooperation that is limited in practice to prohibiting sources of drugs. See discussion *infra* Section II.A.

274. See *supra* text accompanying notes 252–259.

275. See *supra* text accompanying notes 254–259 (discussing the difficulties for reform-minded members leading up to and during the U.N. General Assembly Special Session on Drugs (2016 UNGASS)).

276. Ann Fordham is the Executive Director at the International Drug Policy Consortium. *About Ann Fordham*, Open Democracy, <https://www.opendemocracy.net/author/ann-fordham> [<https://perma.cc/7667-PH4P>] (last visited Apr. 10, 2017).

277. Martin Jelsma is the Program Director for the Drugs and Democracy Program at the Transnational Institute. *About Martin Jelsma*, Open Democracy, <https://www.opendemocracy.net/author/martin-jelsma> [<https://perma.cc/2LAS-WGW8>] (last visited Apr. 10, 2017).

278. Fordham & Jelsma, *supra* note 46; see also *supra* text accompanying notes 254–259.

international drug control problem, including possible amendments to the drug control treaties. Solutions should include exploring revisions to the 1961 Single Convention that would allow for greater flexibility in domestic drug law.²⁷⁹

Specifically, future efforts at international drug law reform, perhaps through the aforementioned advisory panel, should seek to amend Articles 49 and 50(3) of the Single Convention to allow parties to submit a reservation without having to first withdraw from the treaty. Amending Article 49 will help to address the flaws inherent in the Single Convention's prohibitionist approach.²⁸⁰ Amending Article 50(3) in the same manner would also help to alleviate the conflicts between the prohibitive commands of the Single Convention and a party's domestic needs or interests.²⁸¹ Moreover, the proposed amendment to Article 50(3) would also help to broaden the practical scope of international cooperation beyond that which is necessary to achieve prohibition or eradication goals.²⁸² The following Subsections explore these proposals in greater detail.

1. Proposed Amendment to Article 49

Article 49 of the Single Convention provides for several temporary reservations concerning the domestic use of opium, cannabis, and coca leaf chewing; these reservations are not subject to approval by other parties to the Convention.²⁸³ Article 49 reservations can only be made "*at the time of signature, ratification or accession*" and are limited "only to the extent that they were traditional in the territories in respect of which the reservation is made, and were there permitted on 1 January 1961."²⁸⁴ The text of Article 49, particularly the requirement that the substance be permitted in the country prior to 1961, indicates that temporary reservations may have been included to allow countries where use of these drugs was common to develop the necessary legal framework before obligating them to prohibit such use.²⁸⁵ However, it is completely unnecessary to limit the making of a reservation under Article 49 to the time of accession. The reservations available under Article 49 are

279. See *supra* text accompanying notes 231–238.

280. See discussion *supra* Subsection I.C.1.

281. See discussion *supra* Subsection I.C.1.

282. See discussion *supra* Subsection I.C.1.

283. See Single Convention on Narcotic Drugs, *supra* note 23, art. 49.

284. *Id.* arts. 49(1), (2)(a) (emphasis added).

285. See *supra* text accompanying notes 61–65 (discussing restrictions placed on substances deemed drugs by the Single Convention).

of a limited nature and, for a vast majority of parties, have long since expired, as their expiration is tied to the entry into force of the Single Convention, and not of the reservation.²⁸⁶ It therefore makes little sense to limit the use of this Article to matters of timing.

Although one may argue that a party to the Single Convention should not be able to change the terms of an agreement to which it has already assented, with respect to Article 49 this argument is unpersuasive. Article 49 reservations are essentially automatic; they take effect, as a matter of course, upon accession to the Single Convention, should the signatory meet the requirements of the Article's other provisions and elect to make the reservation.²⁸⁷ No approval by other parties is required.²⁸⁸ The other provisions would remain in place, including the reporting requirements, expiration dates, and the requirement that the substance had been permitted in the country prior to 1961.²⁸⁹ Although this proposed amendment would likely have little impact for longer term parties to the Single Convention,²⁹⁰ a newer party, meeting the requirements for a reservation and having acceded to the Convention without the reservation, would have more flexibility should it be unable to implement domestically the law required by the treaty. In the alternative, the addition of a provision that would allow a party to enter a reservation after accession, but delay its entry into force until some number of parties fail to object in a given time period, would serve a similar purpose. Such alternative, however, would even further limit the utility of allowing Article 49 reservations to be entered for a state that is already a party to the Single Convention.

2. Proposed Amendment to Article 50(3)

An amendment to Article 50(3) that would allow parties to enter a reservation for approval without first having to withdraw from the Single Convention would have far more impact than the above proposed amendment to Article 49. Currently, a country that wishes to become a party to the Convention, but subject to a reservation

286. See *supra* text accompanying notes 83–87 (discussing the specific provisions of Article 49).

287. See *supra* text accompanying notes 83–87.

288. See *supra* text accompanying notes 83–87.

289. See *supra* text accompanying notes 83–87.

290. See *supra* text accompanying notes 83–87. The longer-term parties to the Single Convention would not be able to make use of this change to Article 49 because of the expiration timeline of Article 49(2).

not contemplated by the text of the treaty, must inform the U.N. Secretary General to begin the process.²⁹¹ Here, again, the making of a reservation is limited to the time of accession.²⁹² The timing requirement of Article 50(3) is even more unnecessarily restrictive than that of Article 49 in light of the heightened procedural safeguards already in place.²⁹³ For a reservation to the Single Convention to be accepted under Article 50 as currently written, a state not already a party to the Single Convention must wait one year after it informs the U.N. Secretary General of its desire for a reservation, giving the other parties to the Single Convention time to object.²⁹⁴ The objections of one-third of the parties are sufficient to prevent the reservation from taking effect.²⁹⁵

Opponents of this proposed amendment will inevitably argue that it would make changing the terms of the treaty far too easy, that the parties should be bound to the terms to which they agreed, and that permitting these reservations will undermine the effectiveness of the treaty. These criticisms, however, fail to account for the check provided by other signatories, a sufficient majority of which could object and prevent reservations so drastic as to harm efforts at global drug control from entering into force.²⁹⁶ Additionally, such criticisms do not recognize that one of the underlying flaws of the Single Convention is its preference for prohibitive measures.²⁹⁷ This preference for prohibition undercuts the ability of governments to experiment with policies and legislation that may be more effective in combating the global drug problem, such as an increased focus on education and public health.²⁹⁸

The primary effect of the timing requirement in Article 50(3) is to force parties to withdraw from the Single Convention, only to later re-accede and enter a reservation.²⁹⁹ Where—as was the situation with Bolivia—amendments to the Single Convention are not possible, reservations become necessary to balance domestic needs

291. Single Convention on Narcotic Drugs, *supra* note 23, art. 50(3).

292. *See supra* text accompanying notes 89–91.

293. *See supra* text accompanying notes 89–91.

294. *See supra* text accompanying notes 83–87.

295. *See supra* text accompanying notes 83–87.

296. *See supra* text accompanying notes 89–91.

297. *See supra* text accompanying notes 266–268 (discussing how the traditional prohibitionist approach of the Single Convention resulted in both failure to significantly affect drug production and trafficking and violence between the state and its citizens).

298. *See supra* text accompanying notes 266–268.

299. *See supra* text accompanying notes 210–214.

with treaty obligations.³⁰⁰ Unable to pass its proposed amendments to the Single Convention, Bolivia was only eventually able to bring its domestic law into compliance with the drug control treaties using the more cumbersome procedures of withdrawal and re-accession currently contained in Article 50(3).³⁰¹ Amending Article 50(3) to allow parties to submit reservations without withdrawing from the Single Convention would provide them with the ability to address potentially harsh domestic effects that may result from their international obligations without forcing them to denounce these obligations entirely.³⁰²

For Bolivia, the process of obtaining a reservation took almost two years.³⁰³ In the absence of the timing provision in Article 50(3), immediate submission of Bolivia's proposed reservation would have started the one-year waiting period much earlier.³⁰⁴ The withdrawal requirement is unnecessarily inefficient. Parties to the Single Convention must make a choice between withdrawing from the treaty, with the possibility that their reservation will not take effect, and forgoing the attempt to obtain a reservation at all.³⁰⁵ The proposed amendment to Article 50(3), by removing the burden of withdrawal, would have the effect of making reservations more readily available.

This amendment to Article 50(3) would also enhance international cooperation in addressing the drug problem by removing what is essentially a penalty for seeking a reservation and allowing signatories to remain committed to compliance with the Single Convention even as they seek to modify some of its provisions.³⁰⁶ The guiding principles of international drug control recognize that the nature of the global drug problem requires cooperation between nations to effectively address it.³⁰⁷ Because the purpose of the Single Convention and related treaties is to provide the framework through which this international cooperation is to take

300. See *supra* text accompanying notes 210–214.

301. See *supra* text accompanying notes 210–214.

302. See *supra* text accompanying notes 89–91 (outlining the current system for entering reservations under Article 50(3)); see also *supra* text accompanying notes 202–209 (describing the process through which Bolivia entered its reservation to the Single Convention).

303. Bolivia submitted its notice to withdraw from the treaty on June 29, 2011, and its re-accession with the reservation came into effect on February 10, 2013. See *supra* text accompanying notes 210–214.

304. See *supra* text accompanying notes 89–91.

305. See *supra* text accompanying notes 89–91.

306. See *supra* text accompanying notes 89–91.

307. See *supra* text accompanying notes 55, 217, 220, 222.

place,³⁰⁸ it is neither necessary nor desirable to force withdrawals from the Single Convention. Broad cooperation in addressing the drug problem requires maximizing participation. By allowing parties to move away from the prohibition-oriented approach to domestic drug legislation, the proposed amendment would allow parties to pursue joint control programs,³⁰⁹ rather than pushing for joint policing programs.³¹⁰

Removing the burden of withdrawal before entrance of a reservation would likely increase the number of reservations requested, particularly by parties more critical of the current drug control treaties.³¹¹ Even if these reservations fail to enter into force because of objections, an increase in the entry of reservations could itself provide a benefit. Parties would be forced to consider their individual objections to the reservations, resulting in greater attention to the underlying reasons for requesting the reservations in the first place. Moreover, individual nations, thus freed from their more troubling treaty obligations, could then design less prohibitive and perhaps more effective approaches to drug control better suited to their national needs.³¹² For example, following its reservation, Bolivia has effectively reduced the overall area of coca cultivation in the country and has done so without banning traditional uses of coca or sending its military off to fight its citizens.³¹³

This Note does not argue that amending Articles 49 and 50(3) will solve the world drug problem or that it will address all the issues inherent in the current international drug control system. As evidenced by Bolivia's reservation, an exception to one portion of the Single Convention does not resolve every issue with the treaty scheme.³¹⁴ Allowing for a more simplified procedure to make a reservation will, however, allow parties an opportunity to

308. See *supra* text accompanying note 59.

309. For example, though extremely unlikely, Peru could enter a reservation similar to Bolivia's, allowing the two countries to implement a coordinated coca control program. This is to serve only as an example of a cooperative control program, since Peru adheres to an eradication program. See *supra* note 196 for more on Peru's eradication program.

310. See *supra* text accompanying note 254 (discussing the United States' interpretation of the purpose of the 2016 UNGASS, which included "strengthening international law enforcement cooperation").

311. See *supra* text accompanying note 252 (noting that Colombia, Guatemala, and Mexico have become critical of the current drug control treaties).

312. See *supra* text accompanying notes 231–238 (discussing the Swiss heroin program of the 1990s and its success in combating the country's heroin problem).

313. See *supra* text accompanying notes 197–201 (discussing the successes of the Bolivian coca program and its focus on engagement of farmers).

314. See *supra* text accompanying notes 199–201 (discussing Bolivia's continued difficulty with cocaine trafficking, despite its success in reducing overall coca cultivation).

lean away from outright prohibition in favor of control-based programs, like Bolivia's, that focus on engagement with citizens instead of prosecution of them.³¹⁵ Passage of the two amendments by the 2016 UNGASS, or at a minimum, investigation by an advisory panel for later adoption, would serve as a sort of compromise: either option would avoid the subject of large scale changes for which a consensus has not yet been reached, but provide an escape hatch of sorts for those parties dissatisfied with the flaws inherent in the current treaty scheme.³¹⁶

CONCLUSION

The current international legal framework for drug control, founded on the 1961 Single Convention, is based on the premise that the global drug problem can be eliminated through prohibition enforced through the cooperation of its parties.³¹⁷ The Single Convention's prohibitionist approach, coupled with international cooperation focused on achieving this aim—to the exclusion of other methods³¹⁸—has not worked and has stifled progress towards a more effective means of addressing the global drug problem.³¹⁹ The provisions of the Single Convention have made parties' pursuit of domestic drug policies tailored to fit their needs difficult, as doing so frequently violates the prohibitionist approach and incurs the enmity of the United Nations and parties more closely wedded to the prohibitionist philosophy.³²⁰

The 2016 UNGASS could have provided a rare opportunity for possible change to the international drug control system.³²¹ Although dissatisfaction with the current state of international drug control may be high among certain members of the international community,³²² it does not appear to have reached a tipping

315. See *supra* text accompanying notes 197–201 (discussing the successes of the Bolivian coca program and its focus on engagement of farmers).

316. See *supra* text accompanying notes 252–259 (discussing the challenges to agreement on the scope of the 2016 UNGASS debate due to entrenched bureaucracy within the United Nations and a lack of consensus among certain blocks of countries).

317. See *supra* text accompanying notes 61–64.

318. See *generally* discussion *supra* Subsection I.C (discussing increased international cooperation to implement international drug policy).

319. See *supra* text accompanying notes 231–238.

320. See *generally* discussion *supra* Subsection I.C.1 (describing the drug control scheme as insufficient to account for the differences in individual countries).

321. See *generally* discussion *supra* Subsection I.C.2 (discussing the political reality of the 2016 UNGASS).

322. See *supra* text accompanying notes 250, 252 (discussing the growing sense of dissatisfaction within parts of the international community and a desire for a more public health-oriented approach to the international drug problem).

point, particularly in the face of opposition from the U.N. bureaucracy and the United States,³²³ and thus the hopes of those seeking reform could not be realized.³²⁴ Accordingly, the 2016 UNGASS should have considered addressing the deficiencies with the Single Convention through the adoption of amendments to Articles 49 and 50(3) that would allow a party to enter a reservation without the current requirement that it first withdraw from the treaty before being allowed to re-accede with its reservation.³²⁵

Although the proposed amendments would not comprise the broader policy shift advocated by reformers, the 2016 UNGASS could have adopted these amendments because they are politically feasible, as they address both the rigid prohibitionist approach taken by the Single Convention and broaden the scope of cooperation.³²⁶ The proposed amendments to Sections 49 and 50(3) are politically feasible because their adoption would leave unaddressed the larger policy issue, but provide a form of relief to those individual parties that prefer a shift away from the traditional prohibitionist approach.³²⁷ In the end, an increased ability to enter reservations has the potential to effect a greater change, as a larger number of reservation submittals, even if objected to, will at a minimum force other parties to consider the reasons that a reservation was sought in the first place.³²⁸

With the closing of the 2016 UNGASS, the debate over the future of international drug control continues. This Note is therefore humbly submitted as one suggestion for future discussions.

323. See *supra* text accompanying notes 254–259 (discussing opposition to a policy shift in international drug control).

324. See *supra* text accompanying notes 254–259.

325. See generally discussion *supra* Subsections II.B.1–2 (discussing the proposed amendments to Articles 49 and 50(3)).

326. See discussion *supra* Subsection II.B.2.

327. See discussion *supra* Subsection II.B.2.

328. See discussion *supra* Subsection II.B.2.