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Coca Leaves and Colorado: International Law and the Shifting Landscape of Drug Reform

CODY T. MASON[†]

INTRODUCTION

In 1961, the international community committed itself to ending the production, transportation, and use of narcotic drugs.¹ In doing so, the adopted Single Convention on Narcotic Drugs stated “addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind,” and called on all nations to act on their “duty to prevent and combat this evil.”² Accordingly, the treaty required all member states to enforce a general prohibition against narcotic drugs, other than for limited exceptions,³ including through criminal penalties.⁴ The treaty ushered in a wave of national anti-drug policies across the world and continues to serve as the foundation of modern drug prohibition policies.⁵

Although over 50 years have passed, and far-reaching international cooperation has followed, the success, costs, and effects of international drug prohibition remain highly dubious. The United Nations estimated that the international rate of illicit drug use during

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1. Single Convention on Narcotic Drugs art. 2, ¶ 5, *opened for signature* Jan. 24, 1961, 520 U.N.T.S. 151 (entered into force Dec. 13, 1964).

2. *Id.* at 204. The Single Convention recognizes the medical and scientific benefits associated with certain narcotics, and includes limited exceptions for such use. *Id.*

3. For example, the treaty includes exceptions for medicinal drugs carried on ships and aircraft engaged in international traffic. *Id.* at art. 32.

4. *Id.* at art. 36.

5. Allyn L. Taylor, *Addressing the Global Tragedy of Needless Pain: Rethinking the United Nations Convention on Narcotics Drugs*, 35 J.L. MED. & ETHICS 556, 560 (2007).

the 1990s was 3.3 to 4.1 percent.⁶ Over a decade later, it found that 3.6 to 6.9 percent of people ages 15 to 64 had used illicit drugs in 2011.⁷ Between 1998 and 2012, the amount of opium poppy cultivated per year remained relatively stagnant.⁸ Similarly, the illicit cultivation of coca brush decreased by less than ten percent between 2002 and 2011,⁹ despite extensive eradication efforts in source countries such as Colombia.¹⁰ In addition, from the 1980s to 2007, the price of many drugs, including powder cocaine, crack cocaine, and heroin, fell, while purity remained constant or increased.¹¹

Equally disconcerting are the substantial costs incurred by implementing this policy, as evidenced by North America's experiences in enforcing prohibition. The United States alone spends over \$25 billion per year to combat narcotic drugs,¹² while some economists estimate that the total annual cost, on the federal and state levels, is closer to \$41 billion.¹³ Moreover, the costs of prohibition are hardly limited to financial expenditures. In 2012, there were over 1.5 million drug abuse arrests in the United States, with over forty percent based on possession of marijuana.¹⁴ Between 2006 and 2012,

6. U.N. OFFICE FOR DRUG CONTROL & CRIME PREVENTION, GLOBAL ILLICIT DRUG TRENDS, at 116, U.N. SALES NO. E.99.XI.16 (1999).

7. U.N. OFFICE ON DRUGS & CRIME, WORLD DRUG REPORT 2013, AT 1, U.N. SALES NO. E.13.XI.6 (2013).

8. *Id.* at Annex II, at xi.

9. *Id.* at Annex II, at xiii.

10. Michell L. Dion & Catherine Russler, *Eradication Efforts, the State, Displacement and Poverty: Explaining Coca Cultivation in Colombia during Plan Colombia*, 40 J. LATIN AM. STUD. 399, 400–01 (2005); see also Guy R. Knudsen, *War is Peace: How Language Begets Power and Helps to Skirt International Law in U.S. Efforts to Eradicate Colombian Coca Crops Using Chemical and Biological Agents*, 6 CRIT. 55, 60–61 (2013) (discussing the U.S.-backed Plan Colombia, involving mass coca eradication through the use of aerial herbicides).

11. ARTHUR FRIES ET AL., INST. FOR DEF. ANALYSES, THE PRICE AND PURITY OF ILLICIT DRUGS: 1981–2007, 9–11 (2008).

12. OFFICE OF NAT'L DRUG CONTROL POLICY, THE NATIONAL DRUG CONTROL BUDGET: FY 2013 FUNDING HIGHLIGHTS, 1 (2012), available at http://www.whitehouse.gov/sites/default/files/ondcp/fy_2013_budget_highlights.pdf.

13. JEFFREY A. MIRON & KATHERINE WALDOCK, CATO INST., THE BUDGETARY IMPACT OF ENDING DRUG PROHIBITION, 1 (2010), available at <http://www.cato.org/sites/cato.org/files/pubs/pdf/DrugProhibitionWP.pdf>.

14. *Crime in the United States 2012*, FED. BUREAU OF INVESTIGATION, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/persons-arrested/persons-arrested> (last visited Feb. 22, 2014).

over 60,000 Mexicans were killed in drug violence.¹⁵ Mexico's military response to that violence, which has been marred with accusations of human rights abuses,¹⁶ has been subsidized by the United States.¹⁷

Considering the complicated and troubled history of drug prohibition, it is not surprising that some countries, states, and cities have debated and adopted forms of drug decriminalization, regulation, and legalization. But while these policy changes may be justified by shifting circumstances and experience, international law remains unmoved. Despite a growing wave of drug reform, the Single Convention remains the cornerstone of international prohibition-focused drug policy.

As such, this paper will explore the status of international drug laws, the reforms taking place across the world, and the ability of these competing movements to exist together. Part I looks at the history and components of the Single Convention.¹⁸ Part II discusses the enforcement of the Single Convention, with particular attention paid to Bolivia's successful attempt to create a reservation for coca leaf chewing.¹⁹ Part III outlines some of the most important current drug reform efforts, specifically in Uruguay and the American states of Colorado and Washington.²⁰ Part IV looks at possible future legalization regulations and draws on evidence and recent developments to conclude that the modern drug reform movement is likely to continue and is incompatible with the Single Convention.²¹ The culmination of this paper's findings is that those interested in maintaining the validity of the Single Convention should favor a new protocol or reservation or amendment procedure allowing for limited legalization efforts for certain substances, such as marijuana.

15. MEXICO'S DISAPPEARED: THE ENDURING COST OF A CRISIS IGNORED, HUMAN RIGHTS WATCH 1 (2013), *available at* http://www.hrw.org/sites/default/files/reports/mexico0213_FoUpload_0_0_0.pdf.

16. *Id.*

17. *Merida Initiative*, U.S. DEP'T. OF STATE, <http://www.state.gov/j/inl/merida/> (last visited Nov. 10, 2013).

18. *See infra* Part I.

19. *See infra* Part II.

20. *See infra* Part III.

21. *See infra* Part IV.

I. THE ROAD TO THE SINGLE CONVENTION ON NARCOTIC DRUGS

A. *Early International Efforts to Regulate Narcotics*

The first international treaty regulating narcotic drugs was the 1912 Hague International Opium Convention.²² Although initially signed by representatives from only a handful of countries, it gained near-universal adherence after it was incorporated into the Treaties of Versailles, which ended World War I.²³ The Convention, among other provisions, required the parties to enact “effective laws or regulations for the control of the production and distribution of raw opium,”²⁴ limit the number of areas for the import and export of raw opium,²⁵ prevent the export of raw opium to countries which prohibited it,²⁶ and to clearly mark all exported opium as such.²⁷ It also called for measures leading to the “gradual and efficacious suppression” of the manufacture, internal trade, and use of prepared opium.²⁸ The Convention also contained provisions limiting the export and import of cocaine and morphine for medicinal purposes.²⁹

The 1912 agreement was followed by a second international convention signed in Geneva in 1925.³⁰ Like its predecessor, this convention dealt with the regulation of narcotic drugs, including opium, cocaine, and morphine.³¹ However, the 1925 agreement also introduced regulations of cannabis, which the convention referred to as “Indian hemp.”³² The 1925 agreement, which was ratified by 55 nations, was in turn followed by the 1931 Convention for Limiting the Manufacture and Regulating the Distribution of Narcotics Drugs.

22. U.N. Director General/Executive Director of Office on Drugs & Crime, Opening Remarks on the Event to Commemorate the 100th Anniversary of the Signing of the 1912 International Opium Convention, <http://www.unodc.org/unodc/en/speeches/2012/1912-international-opium-convention.html> (last visited Mar. 24, 2014). See generally Norman Ansley, *International Efforts to Control Narcotics*, 50 J. CRIM. L. & CRIMINOLOGY 105 (1959) (discussing earlier largely bilateral treaties affecting the production and trade of narcotic drugs).

23. *The 1912 Hague International Opium Convention*, U.N. OFFICE ON DRUGS & CRIME (Jan. 23, 2009), <http://www.unodc.org/unodc/en/frontpage/the-1912-hague-international-opium-convention.html>.

24. International Opium Convention art. 1, Jan. 23, 1912, 38 Stat. 1912 (1912).

25. *Id.* at art. 2, at 1930.

26. *Id.* at art. 3.

27. *Id.* at art. 4, at 1931.

28. *Id.* at art. 6.

29. *Id.* at art. 10, at 1932.

30. International Opium Convention, Feb. 19, 1925, 81 L.N.T.S. 231.

31. *Id.* at art. 4, at 329.

32. *Id.* at art. 1.

That convention called on its 64 member states and assorted territories to create a “special administration” to effectuate the treaty, regulate and control the drug trade, and combat drug addiction.³³ It also divided narcotic substances into groups, or schedules, based on their addictive propensity.³⁴

In 1936, a new treaty, the Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, signaled a shift in the international focus toward imprisonment and penal enforcement. The treaty, commonly known as the 1936 Trafficking Convention, obligated each of the 36 member states to create provisions “severely punishing, particularly by imprisonment or other penalties of deprivation of liberty,” among other things, the manufacture, preparation, possession, distribution, purchase, transport and export of narcotic drugs.³⁵ Although the Convention faced limited initial acceptance, it paved the way for the modern approach to drug policy by creating the first international drug crime offenses.³⁶

After World War II, the United Nations took responsibility for enforcing the international drug treaties from the League of Nations³⁷ through the creation of the Lake Success Protocol of 1947.³⁸ The scope of international control was then expanded a year later under the Paris Protocol to cover thirty previously unregulated synthetic drugs.³⁹ In 1953, the number of conventions continued to increase with the introduction of the New York Opium Protocol, which limited the import and export of opium to that produced in seven specific countries.⁴⁰

33. Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, art. 15, July 13, 1931, 139 L.N.T.S. 303 (1931).

34. David Bewley-Taylor & Martin Jelsma, *Regime Change: Re-visiting the 1961 Single Convention on Narcotic Drugs*, 23 INT’L J. DRUG POL’Y 72, 74 (2012).

35. Convention for the Suppression of the Illicit Traffic in Dangerous Drugs art. 2, June 26, 1936, 198 L.N.T.S. 300.

36. *Chronology: 100 Years of Drug Control*, UNITED NATIONS OFFICE ON DRUGS & CRIME, http://www.unodc.org/documents/wdr/WDR_2008/timeline_E_PRINT.pdf (last visited Feb. 22, 2014).

37. Bewley-Taylor & Jelsma, *supra* note 34, at 74.

38. Protocol Amending the Agreements, Conventions and Protocols on Narcotic Drugs art. II, ¶ 2, Dec. 11, 1946, 12 U.N.T.S. 179.

39. Ansley, *supra* note 22, at 109.

40. Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium, June

B. The Single Convention on Narcotic Drugs and Modern Reforms

While the intention of the new UN treaties was to broaden and update the scope of the previous international drug agreements, they were adopted at a time when a parallel effort was underway to simplify the array of conventions that had been “developing piecemeal since 1912.”⁴¹ The result of those efforts was the Single Convention on Narcotic Drugs, which terminated the previous drug control conventions⁴² by merging them into a single uniform document.⁴³ As noted by the International Narcotics Control Board (INCB), the purposes of the Single Convention were to codify the existing drug control treaties and to extend their reach to include “the cultivation of plants that were grown as the raw material of narcotic drugs.”⁴⁴ As such, it was meant to deter drug trafficking and “limit the possession, use, trade in, distribution, import, export, manufacture and production of drugs exclusively to medical and scientific purposes.”⁴⁵

The Single Convention set limits on the amount of drugs that could be manufactured and imported,⁴⁶ called for the prohibition of narcotic drug cultivation where possible,⁴⁷ imposed restrictions on the manufacture of narcotics,⁴⁸ and prohibited “the possession of drugs except under legal authority,” such as for medical purposes.⁴⁹ In addition, the Single Convention created four schedules of drugs, to determine which narcotics would be subject to which restrictions.⁵⁰ In order to promote compliance with and implementation of the various provisions, the Single Convention created the Commission on Narcotic Drugs and the INCB.⁵¹

23, 1953, 456 U.N.T.S. 35. The seven countries were Bulgaria, Greece, India, Iran, Turkey, the Soviet Union, and Yugoslavia. *Id.* art. XV, at 38.

41. Bewley-Taylor & Jelsma, *supra* note 34, at 74.

42. Single Convention on Narcotic Drugs, *supra* note 1, art. 44, at 258–59.

43. U.N. OFFICE ON DRUGS & CRIME, *supra* note 6, at 103.

44. *Single Convention on Narcotic Drugs, 1961*, INT’L NARCOTICS CONTROL BD., http://www.incb.org/incb/en/narcotic-drugs/1961_Convention.html (last visited Nov. 10, 2013).

45. *Id.*

46. Single Convention on Narcotic Drugs, *supra* note 1, art. 21, at 230.

47. *Id.* at art. 22, at 232.

48. *Id.* at art. 29, at 240.

49. *Id.* at art. 33, at 248.

50. *Id.* at art. 2, at 208, 210.

51. *Id.* at art. 5, at 216. These offices are discussed *infra* Part II.

The Single Convention was amended in 1972, but no dramatic changes have been made to its scope or operation.⁵² Rather, instead of adjusting the Single Convention to account for changing cultural norms and research, the international community has created similar, parallel agreements. For example, in 1976, the Convention on Psychotropic Substances entered into force.⁵³ This new treaty, while independent of the Single Convention, was modeled after that earlier agreement's format and scheduling system.⁵⁴ The purpose was to expand the list of substances covered by international law to include psychotropic drugs, such as LSD, psilocybin, amphetamines, and PCP.⁵⁵ Similar approaches were also taken with the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,⁵⁶ which expanded regulation to drug precursors,⁵⁷ and the Convention Against Transnational Organized Crime,⁵⁸ which addressed issues of drug trafficking, as well as broader areas of terrorism and crime.⁵⁹

Although these later conventions expanded the reach of international drug laws, the Single Convention remains the cornerstone of modern drug policy.⁶⁰ The institutions and principles it put in place continue to influence policymakers throughout the world, and 184 states are currently members to the agreement.⁶¹ However, as

52. Bewley-Taylor & Jelsma, *supra* note 34, at 78.

53. Convention on Psychotropic Substances, *opened for signature* Jan. 11, 1971, 1019 U.N.T.S. 175 (entered into force Aug. 16, 1976).

54. Bewley-Taylor & Jelsma, *supra* note 34, at 79.

55. *Id.*

56. United Nations Convention Against Illicit Traffic in Narcotics Drugs and Psychotropic Substances, *opened for signature* Dec. 20, 1988, 1582 U.N.T.S. 95 (entered into force Nov. 11, 1990).

57. *Legal Framework for Drug Trafficking*, U.N. OFFICE ON DRUGS & CRIME, <http://www.unodc.org/unodc/en/drug-trafficking/legal-framework.html> (last visited Nov. 10, 2013).

58. United Nations Convention Against Transnational Organized Crime, *adopted* Nov. 15, 2000, 2255 U.N.T.S. 209 (entered into force Sept. 29, 2003).

59. G.A. Res. 55/25, ¶ 6, U.N. Doc. A/RES/55/25 (Jan. 8, 2001).

60. U.N. OFFICE ON DRUGS & CRIME, *supra* note 6, at 103.

61. Single Convention on Narcotic Drugs, 1961, as Amended by the Protocol Amending the Single Convention on Narcotic Drugs, 1961, Aug. 8, 1975, 976 U.N.T.S. 105 [hereinafter *Single Convention as Amended*]. A running list of signatories is found on the UN website. *Single Convention on Narcotic Drugs, 1961, as Amended by the Protocol Amending the Single Convention on Narcotic Drugs, 1961*, UNITED NATIONS TREATY COLLECTION, <http://treaties.un.org/>

explained below, the Single Convention provides for extremely limited substantive enforcement options, and member states' compliance has been uneven in many ways.

II. ENFORCING THE SINGLE CONVENTION

A. *Enforcement Agencies*

Several international organizations are charged with implementing, supervising, and enforcing compliance with the Single Convention,⁶² but two stand out in particular. First, the United Nations Office on Drugs and Crime (UNODC) is charged with assisting member states “in their struggle against illicit drugs, crime and terrorism.”⁶³ To do this, the UNODC performs research, organizes campaigns, attempts to increase the capacity of states to counteract illicit drugs, and helps states implement the treaty through the development of domestic policies and legislation.⁶⁴ The governing body for the UNODC is the Commission on Narcotic Drugs, which is responsible for “supervising the application of international drug control treaties”⁶⁵ and was created by the Single Convention.⁶⁶ The Commission is also charged with amending the drug schedules and making recommendations for implementing the Single Convention.⁶⁷

The second international agency, which is more involved than UNDOC in actual enforcement, is the quasi-judicial body known as the International Narcotics Control Board (INCB). The INCB was created by the Single Convention to work with governments “to limit the cultivation, production, manufacture and use of drugs to an adequate amount required for medical and scientific purposes.”⁶⁸ Despite this role, the INCB does not have any police powers at its disposal to enforce the Single Convention.⁶⁹

Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-18&chapter=6&lang=en, (last visited Nov. 10, 2013).

62. Taylor, *supra* note 5, at 560–61.

63. *About UNODC*, U.N. OFFICE ON DRUGS & CRIME, <http://www.unodc.org/unodc/en/about-unodc/index.html?ref=menutop> (last viewed Nov. 10, 2013).

64. *Id.*

65. *The Commission on Narcotic Drugs*, U.N. OFFICE ON DRUGS & CRIME, <http://www.unodc.org/unodc/commissions/CND/> (last visited Nov. 10, 2013).

66. Single Convention on Narcotic Drugs, *supra* note 1, at art. 5, at 216.

67. *Id.* at art. 8, at 218.

68. *Single Convention as Amended*, *supra* note 61, at art. 9, ¶ 4, at 112.

69. Bewley-Taylor & Jelsma, *supra* note 34, at 75.

However, the INCB does have the ability to recommend that the member states stop the import or export of drugs, including those for purely medical purposes, from or to a violating country.⁷⁰ Such a recommendation is not appealable to a higher body,⁷¹ but can only occur if the INCB objectively believes that the Single Convention's aims are being "seriously endangered" and if it is satisfied that the embargo is "necessary" to prevent that endangerment.⁷² Moreover, the Secretary General's comments to the Single Convention stress that the initiation of a procedure to examine whether a state has failed to adhere to the Single Convention is "a serious and very delicate matter," particularly for the reason that it could lead to an embargo.⁷³ The INCB has never recommended a drug embargo.⁷⁴

Instead, the INCB has relied on pressure politics to influence countries that are violating, or seem likely to violate, the Single Convention. This involves a "name and shame" process that is implicitly supported by the possibility of an embargo.⁷⁵ For example, in its 2012 report the INCB noted that the famous "coffee shops" that sell marijuana in the Netherlands "are in violation of the provisions of the international drug control conventions."⁷⁶ This was true despite planned reforms, including limiting access to residents of the Netherlands aged 18 years or older and limiting the number of annual members per shop.⁷⁷

As will be discussed below, the INCB's response to the marijuana "coffee shops" is typical of its approach to regulatory models that employ even limited drug legalization, even if, as in the

70. Single Convention on Narcotic Drugs, *supra* note 1, at art. 14, at 224.

71. INT'L DRUG POLICY CONSORTIUM, THE INTERNATIONAL NARCOTICS CONTROL BOARD: CURRENT TENSIONS AND OPTIONS FOR REFORM 3 (2008), available at http://www.beckleyfoundation.org/pdf/IDPC_BP_07.pdf.

72. Single Convention on Narcotic Drugs, *supra* note 1 at art. 14, at 224.

73. U.N. SEC'Y-GEN., COMMENTARY ON THE SINGLE CONVENTION ON NARCOTIC DRUGS, 1961, at 178, U.N. Sales No. E.73.XI.1 (1973).

74. INT'L DRUG POLICY CONSORTIUM, *supra* note 71, at 3.

75. *Id.*

76. INT'L NARCOTICS CONTROL BD., REPORT OF THE INTERNATIONAL NARCOTICS CONTROL BOARD FOR 2012, at 100, U.N. Doc. E/INCB/2012/1, U.N. Sales No. E.13.XI.1 (2012).

77. *Id.*

Netherlands, that legalization is largely *de facto*.⁷⁸ In contrast, the INCB has been generally indifferent toward possessory decriminalization measures and some medical programs. For example, the INCB sent a mission to Portugal in June 2012 and found that the government was “fully committed to the objectives” of the international drug control conventions,⁷⁹ even though Portugal decriminalized possession of certain amounts of all drugs in 2001.⁸⁰ Such levity is in line with the Single Convention’s emphasis on allowing narcotics to be used for medical purposes, as well as comments to the Single Convention stating that the treaty need not necessarily apply to simple possession for personal use.⁸¹ However, these “exceptions” are very narrow and can often appear inconsistent.⁸² Moreover, they are completely inapplicable when member states bypass decriminalization in favor of drug legalization.⁸³

78. See *Toleration Policy Regarding Soft Drugs and Coffee Shops*, GOV'T OF NETHERLANDS, <http://www.government.nl/issues/drugs/toleration-policy-regarding-soft-drugs-and-coffee-shops> (last visited Feb. 26, 2013) (explaining that marijuana is technically illegal in the Netherlands, but its use and sale from regulated “coffee shops” is officially “tolerated”).

79. INT'L NARCOTICS CONTROL BD., *supra* note 76, at 16.

80. Wiebke Hollersen, *'This is Working': Portugal, 12 Years After Decriminalizing Drugs*, DER SPIEGEL, Mar. 27, 2013, <http://www.spiegel.de/international/europe/evaluating-drug-decriminalization-in-portugal-12-years-later-a-891060.html>. For example, someone may possess one gram of heroin, two grams of cocaine, 25 grams of marijuana, 5 grams of hashish, or one gram of MDMA without legal repercussions. *Id.*

81. U.N. SEC'Y-GEN., *supra* note 73, at 402.

82. For example, in its 2012 report, the INCB stated that the “control requirements” in place in every American state that has medicinal marijuana “fall short” or the requirements within the Convention. INT'L NARCOTICS CONTROL BD., *supra* note 76, at 66. It also stated that providing “drug injection rooms” for addicts, as done in Vancouver, is contrary to the Convention unless “limited exclusively to medical and scientific purposes.” *Id.* at 10. In its 2013 report, the INCB stated that the “widely commercialized ‘medical’ cannabis” program in Colorado was “poorly implemented and not in conformity with the 1961 Convention....” INT'L NARCOTICS CONTROL BD., REPORT OF THE INTERNATIONAL NARCOTICS CONTROL BOARD FOR 2013, at 5, U.N. Doc. E/INCB/2013/1, U.N. Sales No. E.14.XI.1 (2014).

83. See INT'L NARCOTICS CONTROL BD., *supra* note 76, at 36 (“The Board wishes to point out that such an initiative, if it were to be implemented, would be contrary to the provisions of the international drug control conventions.”).

B. *Enforcing International Law in Bolivia*

1. Coca Leaves and the Single Convention

Indigenous populations in Bolivia and other Andean countries have been chewing coca leaves since roughly 3000 B.C.⁸⁴ This practice can be traced back to traditional shamanistic rituals,⁸⁵ but coca leaves are chewed for numerous reasons. For example, it has been used to combat the effects of the cold, thin Andean air;⁸⁶ reduce hunger, cold, fatigue, and pain;⁸⁷ and boost energy.⁸⁸ However, despite this history, the Single Convention states that “[c]oca leaf chewing must be abolished within twenty-five years from the coming into force of this Convention.”⁸⁹ Bolivia failed to create a reservation to this provision⁹⁰ when it acceded to the Single Convention in 1976, and was thus bound to enforce the prohibition by 2001.⁹¹

This deadline was never fully met, and the INCB has criticized the failure of the Bolivian government to successfully enforce the prohibition against coca leaf production and use for years.⁹² For example, the INCB’s 1980 report stated that, “[a]lmost all of the cocaine abused in the United States is derived from coca leaf

84. Larry W. Cartmell et al., *The Frequency and Antiquity of Prehistoric Coca-Leaf-Chewing Practices in Northern Chile: Radioimmunoassay of a Cocaine Metabolite in Human-Mummy Hair*, 2 *LATIN AM. ANTIQUITY* 260, 265 (1991).

85. Richard T. Martin, *The Role of Coca in the History, Religion, and Medicine of South American Indians*, 24 *ECON. BOTANY* 422, 424 (1970).

86. American Society of International Law, *Bolivia Rejoins Narcotics Convention with Reservation Protecting Coca Leaf over U.S. and Others’ Objections*, 107 *AM. J. INT’L L.* 460, 461 (John R. Crook ed., 2013).

87. Robert B. South, *Coca in Bolivia*, 67 *GEOGRAPHICAL REVIEW* 22, 22 (1977).

88. *Id.* at 23.

89. Single Convention, *supra* note 1 at art. 49, at 264.

90. Press Release, Department of Public Information, Press Conference on Bolivia’s Proposed Amendment to 1961 Narcotics Drugs Convention, U.N. Press Release (June 24, 2011) [hereinafter Press Conference on Bolivia’s Proposed Amendment].

91. Evo Morales Ayma, *Let Me Chew My Coca Leaves*, *N.Y. TIMES*, Mar. 13, 2009, <http://www.nytimes.com/2009/03/14/opinion/14morales.html>.

92. INT’L NARCOTICS CONTROL BD., REPORT OF THE INTERNATIONAL NARCOTICS CONTROL BOARD FOR 2011, at v, U.N. Doc. E/INCB/2011/1, U.N. Sales No. E.12.XI.5 (2012).

produced illicitly in Peru and Bolivia.”⁹³ In 1996, the INCB noted that coca bush eradication in Bolivia had declined,⁹⁴ and in 2004 it voiced concerns over Bolivia’s political commitment to successful enforcement.⁹⁵ In 2009, the INCB urged the Bolivian government to adopt more effective policies and to take a more “proactive role” in addressing coca leaf cultivation and drug trafficking.⁹⁶ A year later, the INCB noted with “regret” that Bolivia had made no progress in implementing suggested reforms.⁹⁷ Although these repeated warnings might appear identical to the regular recriminations given to countries such as the Netherlands, Bolivia’s general lack of enforcement in regard to coca leaves forebode a more serious confrontation with the Single Convention and the INCB.

2. An Attempt to Amend

In 2005, Bolivians elected the socialist presidential candidate Evo Morales into office.⁹⁸ Morales’ landslide win was historic in that he became the country’s first indigenous president.⁹⁹ Although the majority of the population is indigenous,¹⁰⁰ the country has traditionally been ruled over by Bolivians of Hispanic descent.¹⁰¹ Morales’s ethnicity, combined with his left-wing ideology and friendship with then-president of Venezuela Hugo Chavez portended

93. INT’L NARCOTICS CONTROL BD., REPORT OF THE INTERNATIONAL NARCOTICS CONTROL BOARD FOR 1980, at 27, U.N. Doc. E/INCB/51, U.N. Sales No. E.81.XI.2 (1980).

94. INT’L NARCOTICS CONTROL BD., REPORT OF THE INTERNATIONAL NARCOTICS CONTROL BOARD FOR 1996, at 45, U.N. Doc. E/INCB/1996/1 (1996).

95. INT’L NARCOTICS CONTROL BD., REPORT OF THE INTERNATIONAL NARCOTICS CONTROL BOARD FOR 2004, at 7, U.N. Doc. E/INCB/2004/1, U.N. Sales No. E.05.XI.3 (2005).

96. INT’L NARCOTICS CONTROL BD., REPORT OF THE INTERNATIONAL NARCOTICS CONTROL BOARD FOR 2009, at 32, U.N. Doc. E/INCB/2009/1, U.N. Sales No. E.10.XI.1 (2010).

97. INT’L NARCOTICS CONTROL BD., REPORT OF THE INTERNATIONAL NARCOTICS CONTROL BOARD FOR 2010, at 23, U.N. Doc. E/INCB/2010/1, U.N. Sales No. E.11.XI.1 (2011).

98. Juan Forero, *Coco Advocate Wins Election for President in Bolivia*, N.Y. TIMES, Dec. 19, 2005, http://www.nytimes.com/2005/12/19/international/americas/19bolivia.html?_r=0.

99. Rory Carroll, *Evo Morales Wins Landslide Victory in Bolivian Presidential Elections*, GUARDIAN, Dec. 7, 2009, <http://www.theguardian.com/world/2009/dec/07/morales-presidential-victory>.

100. *Id.*

101. *Bolivia Profile*, BBC, Oct. 8, 2013, <http://www.bbc.com/news/world-latin-america-18727507>.

significant changes both domestically and abroad,¹⁰² but another aspect of Morales' resume posed a different issue for the international community. Namely, Morales is a former coca leaf farmer and has chaired Bolivia's coca leaf growers union since 1996.¹⁰³ He was re-elected to that post as recently as the summer of 2012.¹⁰⁴

Morales' background, combined with Bolivia's failure to effectively implement the prohibition of coca leaf chewing by 2001, set the stage for the Bolivian government's attempts to reshape its role in relation to the Single Convention. In 2006, President Morales called on the UN General Assembly to remove coca leaves from international control.¹⁰⁵ In 2007, the Bolivian government requested that the World Health Organization begin a process of evaluating and validating the medicinal properties of coca leaves.¹⁰⁶ The following year, President Morales reiterated his view that coca leaves should not be under international control in a letter to the UN Secretary-General.¹⁰⁷

More dramatically, in 2009, Bolivia approved a new constitution requiring the state to "protect native and ancestral coca" and emphatically stating that the coca leaf "is not a narcotic."¹⁰⁸ The new constitution also provided that the "reevaluation, production, sale and industrialization of coca shall be governed by law."¹⁰⁹ Morales was a strong supporter of the new constitution, which also increased indigenous rights and loosened presidential term limits, and reportedly wept for joy when a draft version was agreed to in 2008.¹¹⁰

102. *A Champion of Indigeneous Rights—and of State Control of the Economy*, ECONOMIST, Dec. 14, 2005, <http://www.economist.com/node/5300873>.

103. Ryan Villarreal, *Why Bolivian President Morales Still Heads Coca Growers Union*, INT'L BUS. TIMES, July 10, 2012, <http://www.ibtimes.com/why-bolivian-president-morales-still-heads-coca-growers-union-722548>.

104. *Bolivia's Evo Morales Re-elected Coca Growers' Leader*, BBC NEWS, July 9, 2012, <http://www.bbc.co.uk/news/world-latin-america-18768929>.

105. INT'L NARCOTICS CONTROL BD., *supra* note 93, at 36.

106. *Id.*

107. *Id.* at 36–37.

108. NUEVA CONSTITUCIÓN POLÍTICA DEL ESTADO Oct. 2008, art. 384 (Bol.).

109. *Id.*

110. Matthew Taylor, *Evo Morales Hails 'New Bolivia' as Constitution Is Approved*, GUARDIAN, Jan. 26, 2009, <http://www.theguardian.com/world/2009/jan/26/bolivia>.

The new constitution and its coca leaf provision were followed by a direct assault on the Single Convention. Specifically, Morales introduced a treaty amendment that would remove coca leaves from the list of prohibited narcotic drugs by deleting Article 49, Paragraphs 1(c)¹¹¹ and 2(e)¹¹² from the Single Convention.¹¹³ In a *New York Times* op-ed, Morales argued that the initial classification was a mistake that ignored the history, benefits, and lack of negative side effects of coca leaf chewing.¹¹⁴

Under Article 47 of the Single Convention, any party may propose an amendment to the treaty, which must then be circulated to the relevant international bodies and the other member states.¹¹⁵ An amendment will enter into effect if no objections are raised in the 18 months after its circulation.¹¹⁶ If a single party rejects the amendment, the Economic and Social Council has the option of calling a convention to consider the proposed change.¹¹⁷ In the case of Bolivia's proposed amendment, the deadline for member states to lodge an objection was January 31, 2011.¹¹⁸ Three countries – the United States, the United Kingdom, and Sweden – rejected the proposed amendment before the deadline passed.¹¹⁹ Those objections sunk President Morales' attempt to amend the Single Convention and ultimately shifted Bolivia's efforts toward a far less orthodox approach.

3. Denunciations, Reservations, and Re-Adherences

On June 24, 2011, the Bolivian Ambassador to the United Nations Pablo Solón announced that Bolivia would “denounce” the

111. “A Party may at the time of signature, ratification or accession reserve the right to permit temporarily in any one of its territories: ... (c) Coca leaf chewing.” Single Convention on Narcotic Drugs, *supra* note 1, at art. 49.

112. “The reservations under paragraph 1 shall be subject to the following restrictions: ... (e) Coca leaf chewing must be abolished within twenty-five years from the coming into force of this Convention as provided in paragraph 1 of article 41.” *Id.*

President of Bolivia, Letter dated Mar. 12, 2009 from the President of Bolivia to the Secretary-General, U.N. Doc. E/2009/78 (May 15, 2009) (Enclosure).

114. Morales Ayma, *supra* note 91.

115. Single Convention on Narcotic Drugs, *supra* note 1, at art. 47.

116. *Id.*

117. *Id.*

118. U.N. Dep't Pub. Info, Press Conference by Bolivia on Amendment to Single Convention on Narcotic Drugs (Jan. 28, 2011), http://www.un.org/News/briefings/docs/2011/110128_Bolivia.doc.htm.

119. *Id.*

Single Convention.¹²⁰ Having been unable to amend the Single Convention, Bolivia turned to leaving the agreement in order to re-adhere with a reservation protecting the historical right to chew coca leaves.¹²¹ Solón stated that Bolivia's withdrawal and re-adherence to the Single Convention would both occur on January 1, 2012, and that the country's legislature was already in the process of approving the necessary legislation.¹²² Moreover, he assured the international community that Bolivia would remain in compliance with the rest of the treaty pending re-adherence.¹²³ If less than one-third of the member states—61—objected to the re-adherence in the 12 months following its withdrawal, Bolivia would rejoin the Single Convention.¹²⁴

After formally withdrawing from the Single Convention, President Morales continued to push the United Nations to amend the treaty to exempt the chewing of raw coca leaves.¹²⁵ This was unsuccessful, and Bolivia ultimately faced resistance to its re-adherence plan. For example, in its 2011 report, the INCB noted that while Bolivia's "unprecedented" denunciation "may be technically permitted under the Convention, it is contrary to the fundamental object and spirit of the Convention."¹²⁶ Moreover, the INCB warned that allowing such a move to succeed would undermine the integrity of the drug control system and would compromise "the achievements of the past 100 years in drug control."¹²⁷ The INCB, however, did not threaten a drug embargo.¹²⁸ Bolivia's proposed re-adherence was also formally opposed by several influential countries, including the

120. Press Conference on Bolivia's Proposed Amendment, *supra* note 90.

121. *Id.*

122. *Id.*

123. *Id.*

124. U.N. Office of Drugs & Crime, *Bolivia to Re-accede to UN Drug Convention, while Making Exception on Coca Leaf Chewing* (last visited Apr. 1, 2014), <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> [hereinafter *Bolivia to Re-accede*].

125. Marilla Brocchetto, *Bolivia's Morales to UN: Legalize Coca-Leaf Chewing*, CNN (Mar. 13, 2012, 10:35 AM), <http://www.cnn.com/2012/03/13/world/americas/bolivia-morales-coca/>.

126. INT'L NARCOTICS CONTROL BD., *supra* note 92, at v.

127. *Id.*

128. *Id.*

United States and the other members of the G8.¹²⁹ However, only 15 countries¹³⁰ ended up formally objecting—far short of 61 required to block re-adherence—allowing Bolivia to become a member to the Single Convention, with its new reservation,¹³¹ effective February 10, 2013.¹³²

III. CURRENT CHALLENGES TO THE SINGLE CONVENTION

Bolivia's challenge to the Single Convention was a clear loss for the INCB and traditional drug control mechanisms. Although Bolivia failed to amend the Single Convention, it successfully withdrew and re-adhered with a reservation, despite the INCB's dire warnings¹³³ and the unequivocal language of the Single Convention. It is too soon to know the full effects of Bolivia's re-adherence strategy, but it has set the stage for further conflicts between individual states and the INCB. In fact, significant challenges arose soon after Bolivia's re-adherence, in the form of marijuana legalization initiatives recently enacted in Uruguay and the American states of Colorado and Washington.

A. *Legalization Programs*

The programs pursued by Uruguay, Colorado, and Washington differ in their scope and execution but will result in the same outcome: the legalization and regulation of recreational marijuana possession and sales.

1. Marijuana Legalization in Uruguay

129. Press Release, Washington Office on Latin Am., *Bolivia Wins a Rightful Victory on the Coca Leaf* (Jan. 11, 2013), available at http://www.wola.org/news/bolivia_wins_a_rightful_victory_on_the_coca_leaf.

130. *Id.* The 15 countries objecting to re-adherence were: Canada, Finland, France, Germany, Ireland, Israel, Italy, Japan, Mexico, the Netherlands, Portugal, Russia, Sweden, the United Kingdom, and the United States.

131. The reservation states:

The Plurinational State of Bolivia reserves the right to allow in its territory: traditional coca leaf chewing; the consumption and use of the coca leaf in its natural state for cultural and medicinal purposes, such as its use in infusions; and also the cultivation, trade and possession of the coca leaf to the extent necessary for these licit purposes. At the same time, the Plurinational State of Bolivia will continue to take all necessary measures to control the cultivation of coca in order to prevent its abuse and the illicit production of the narcotic drugs which may be extracted from the leaf.

Single Convention as Amended, *supra* note 61.

132. Bolivia to Re-accede, *supra* note 124.

133. INT'L NARCOTICS CONTROL BD., *supra* note 92, at v.

Uruguay is a small South American state that became the first country since the adoption of the modern drug control model to legalize recreational marijuana.¹³⁴ Despite the country officially acceding to the Single Convention in 1975¹³⁵ and signs of opposition among the public,¹³⁶ Uruguay's lower house passed a bill in the summer of 2013 to legalize and regulate the production, distribution, and sale of marijuana.¹³⁷ The closely divided vote sent the bill to the senate, which passed the measure on December 10, 2013.¹³⁸ The President of Uruguay José Mujica signed it into law 13 days later.¹³⁹

Marijuana use has been decriminalized in Uruguay since the 1970s,¹⁴⁰ but the recent measure furthered this move away from the penal approach by allowing marijuana to be sold in pharmacies.¹⁴¹ Purchases of marijuana will be limited to locals¹⁴² that are 18 years or

134. Hannah Hetzer, *Finally, a Nation Legalizes Pot*, CNN (Dec. 11, 2013, 6:43 PM), <http://www.cnn.com/2013/12/10/opinion/hetzer-uruguay-legalizes-marijuana/>.

135. *Single Convention as Amended*, *supra* note 61.

136. At least one poll put support for legalization at 26 percent, with 64 percent opposed. *El Proyecto de Ley Para Regular El Cultivo y Consumo de Marihuana*, GONZÁLEZ RAGA & ASOCIADOS (Dec. 2012), <http://www.cifra.com.uy/novedades.php?idNoticia=182>; Geoffrey Ramsey, *Uruguay's Marijuana Bill Faces Political, Economic Obstacles, In Sight Crime* (July 25, 2013), <http://www.insightcrime.org/uruguay-legalization-drugs/uruguay-marijuana-bill-faces-political-economic-obstacles>.

137. Eloisa Capurro et al., *Uruguay's Lower House Votes to Legalize Marijuana*, CNN, Aug. 1, 2013, <http://www.cnn.com/2013/07/31/world/americas/uruguay-marijuana-legalization/index.html>.

138. Nick Mirotff, *Uruguay Votes to Legalize Marijuana*, WASH. POST, Dec. 11, 2013, at A11.

139. Steven Nelson, *Uruguay's President Quietly Signs Marijuana Legalization Bill*, U.S. NEWS & WORLD REPORT, Dec. 26, 2013, <http://www.usnews.com/news/articles/2013/12/26/uruguays-president-quietly-signs-marijuana-legalization-bill>.

140. Juan Forero, *Growers Celebrate as Uruguay Prepares to Legalize Marijuana Cultivation, Distribution*, WASH. POST, Oct. 23, 2013, http://www.washingtonpost.com/world/pot-growers-celebrate-as-uruguay-legalizes-cultivation-and-consumption-of-marijuana/2013/10/23/f8044fc6-3bfe-11e3-b0e7-716179a2c2c7_story.html.

141. *Id.*

142. Tony Grands, *Blaze Up: Uruguay Becomes the World's First Country to Legalize Marijuana*, URBAN DAILY (Dec. 11, 2013), <http://theurbandaily.com/2013/12/11/uruguay-legalized-marijuana/>.

older, and to 40 grams per month.¹⁴³ Citizens can also grow up to six marijuana plants at home and form smoking clubs allowed to produce up to 99 plants per year.¹⁴⁴ The government will control the psychoactive level of the marijuana sold by testing and limiting the tetrahydrocannabinol (THC) levels of all plants.¹⁴⁵ In addition, the government will advise consumers on the best ways to consume marijuana and will create a confidential registry of those who purchase the drug.¹⁴⁶ Cultivation and production, while regulated, will be left to private enterprises.¹⁴⁷

President Mujica's stated purpose in signing the bill was to eliminate the illegal trade in marijuana by creating a regulated market that will sell marijuana at a fixed, lower price.¹⁴⁸ Uruguay's drug czar stated, prior to passage, that marijuana sales would begin in the second half of 2014 at a price of one dollar per gram.¹⁴⁹ Official guidance issued since passage has suggested a lower price of between 87 cents and one dollar per gram.¹⁵⁰ The government says that marijuana is the most commonly used illegal substance in Uruguay and that drug traffickers earn \$30 to \$40 million per year from the marijuana market.¹⁵¹

2. Marijuana Legalization in Colorado and Washington

The United States is not a stranger to marijuana reform, despite its role as a primary supporter of the modern approach to drug

143. Rafael Romo, *New Rules in Uruguay Create a Legal Marijuana Market*, CNN, May 6, 2014, <http://www.cnn.com/2014/05/06/world/americas/uruguay-marijuana-rules/>.

144. Miroff, *supra* note 138.

145. Uki Goni, *Uruguay Sets Price of Legalised Cannabis at \$1 a Gram*, GUARDIAN (Oct. 22, 2013, 1:19 PM), <http://www.theguardian.com/world/2013/oct/22/uruguay-legal-cannabis-1-dollar-gram>.

146. *Id.*

147. *Id.*

148. Capurro et al., *supra* note 137. There is some evidence that the illegal trade may already be suffering thanks to American legalization programs. Nick Miroff, *Tracing the U.S. Heroin Surge Back South of the Border as Mexican Cannabis Output Falls*, WASH. POST, Apr. 6, 2014, http://www.washingtonpost.com/world/tracing-the-us-heroin-surge-back-south-of-the-border-as-mexican-cannabis-output-falls/2014/04/06/58dfc590-2123-4cc6-b664-1e5948960576_story.html.

com/world/tracing-the-us-heroin-surge-back-south-of-the-border-as-mexican-cannabis-output-falls/2014/04/06/58dfc590-2123-4cc6-b664-1e5948960576_story.html.

149. Goni, *supra* note 145.

150. Malena Castaldi, *Uruguay Says Legal Marijuana to Be Good and Cheap*, REUTERS, May 7, 2014, <http://www.reuters.com/article/2014/05/07/us-uruguay-marijuana-idUSBREA460JR20140507>.

151. Capurro et al., *supra* note 137.

prohibition. As of June 2014, 22 states and the District of Columbia have enacted varying medical marijuana programs.¹⁵² 19 states have decriminalized the possession of certain amounts of marijuana under particular circumstances,¹⁵³ and the District of Columbia, barring federal action, will soon follow suit.¹⁵⁴ According to the National Organization for the Reform of Marijuana Laws, these decriminalization policies typically treat the first-time possession of small amounts of marijuana for personal use like “a minor traffic ticket,” in that punishment does not involve prison time or a criminal record.¹⁵⁵ Although these approaches have become relatively widespread in recent years, the states of Colorado and Washington

152. *State Policy*, MARIJUANA POL’Y PROJECT, <http://www.mpp.org/states/> (last visited June 23, 2014). The states are Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington. New York will become the 23rd state with a medical marijuana program if, as expected, Governor Andrew Cuomo signs a medical marijuana bill passed by the state legislature in June 2014. Jesse McKinley, *New York Senate Passes Bill on Medical Marijuana*, N.Y. TIMES, June 20, 2014, http://www.nytimes.com/2014/06/21/nyregion/new-york-senate-passes-bill-on-medical-marijuana.html?_r=0. In addition, some states, such as Florida and North Carolina, have approved or will likely approve medical programs allowing for the use of marijuana oil. See Lisa Crivelli, *Medical marijuana oil bills approved in North Carolina, Florida*, MSNBC, (June 19, 2014), <http://www.msnbc.com/hardball/medical-marijuana-oil-bills-approved-north-carolina-florida>.

153. *Id.* The states are Alaska, California, Colorado, Connecticut, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New York, North Carolina, Ohio, Oregon, Rhode Island, Vermont, and Washington.

154. Eyder Peralta, *D.C. Mayor Signs Bill Decriminalizing Some Marijuana Use*, NPR, Mar. 31, 2014, <http://www.npr.org/blogs/thetwo-way/2014/03/31/297339798/d-c-mayor-signs-bill-decriminalizing-some-marijuana-use>. Mayor Vincent Gray signed the decriminalization bill on March 31, 2014, but Congress has a 60-day window in which it can block the law from coming into force. *Id.* At the time of publication, it appeared likely that Congress would not block decriminalization from going into effect. See Hannah Hess, *Advocates Fired Up as D.C. Marijuana Decriminalization Avoids Appropriations Rider*, ROLL CALL, June 18, 2014, <http://blogs.rollcall.com/hill-blotter/advocates-fired-up-as-d-c-marijuana-decriminalization-avoids-appropriations-rider/?dcz=>.

155. *States That Have Decriminalized*, NAT. ORG. FOR THE REFORM OF MARIJUANA LAWS, <http://norml.org/aboutmarijuana/item/states-that-have-decriminalized> (last visited June 23, 2014).

made history in 2012 when voters in both states approved ballot measures legalizing recreational marijuana.¹⁵⁶

Colorado's Amendment 64 changed the state constitution to allow the use of marijuana for persons twenty-one years of age or older and called for the marijuana market to be taxed and regulated "in a manner similar to alcohol."¹⁵⁷ The amendment allows for the possession, cultivation, and transportation of up to six marijuana plants, the transfer of up to one ounce of marijuana without payment, and the purchase of marijuana from licensed retail stores.¹⁵⁸ It also requires specific regulations on all aspects of the marijuana trade.¹⁵⁹

Accordingly, in September 2013, Colorado became the first American state to adopt rules for legal, recreational marijuana.¹⁶⁰ The Colorado Department of Revenue's 134-page report on the accepted provisions lays out every aspect of the state's regulation of the marijuana industry, from the testing of retail facilities to waste disposal and advertising.¹⁶¹ Voters in Colorado further legitimized the program when they approved a retail marijuana sales tax with over 65 percent of the vote in 2013.¹⁶² The 15 percent tax is expected to bring in \$67 million per year, which will go toward the regulation of retail marijuana stores, addressing the collateral impact of marijuana legalization, and school construction.¹⁶³ With the

156. Amendment 64 in Colorado was passed with roughly 55 percent of the vote, while voters in Washington enacted Initiative 502 with approval by about 56 percent of that state's vote. *Marijuana Legalization on the Ballot (LIVE RESULTS)*, HUFFINGTON POST, http://www.huffingtonpost.com/2012/11/06/marijuana-legalization-results_n_2074168.html (last updated Nov. 7, 2012).

157. COLO. CONST. art. XVIII, § 16.

158. *Id.*

159. *Id.*

160. Matt Ferner, *Colorado First State in U.S. to Adopt Rules for Legal, Recreational Marijuana*, HUFFINGTON POST (Sept. 10, 2013, 7:08 PM), http://www.huffingtonpost.com/2013/09/10/colorado-first-state-rules-marijuana_n_3902602.html.

161. COLO. DEP'T OF REVENUE MARIJUANA ENFORCEMENT DIV., PERMANENT RULES RELATED TO THE COLORADO RETAIL MARIJUANA CODE (Sept. 9, 2013), available at <http://www.colorado.gov/cs/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1251883847085>.

162. John Ingold, *Colorado Voters Overwhelmingly Approve State Marijuana Tax*, DENVER POST, Nov. 5, 2013, http://www.denverpost.com/breakingnews/ci_24461038/colorado-voters-decide-how-heavily-tax-marijuana-sales.

163. *Id.* Colorado is reported to have brought in nearly \$25 million in revenue from the first three months of legalization. JC Sevcik, *Colorado Generates over \$25M in Marijuana Revenue Since Legalization*, UPI (May 9, 2014, 4:32 PM),

regulations and taxes in place, the first recreational retail marijuana shops opened on January 1, 2014.¹⁶⁴

Similar to the Colorado amendment, the Washington initiative legalizing marijuana requires taxation and regulation in a manner “similar to that for controlling hard alcohol.”¹⁶⁵ Furthermore, it allows for the “production, possession, delivery, distribution, and sale of marijuana” from specially licensed retailers and processors.¹⁶⁶ Like its counterpart in Colorado, the initiative limits its provisions to persons twenty-one years of age or older, and lays out specific requirements for licensing, sales, and regulations.¹⁶⁷ Individuals may possess up to one ounce of useable marijuana without facing criminal prosecution, and the state estimates that marijuana will cost roughly 12 dollars per gram.¹⁶⁸ The new law imposes a 25 percent tax on all sales.¹⁶⁹

The initiative left licensing, core regulations, and the drafting of rules to the Washington State Liquor Control Board, which approved a set of proposed rules in September 2013.¹⁷⁰ Among the rules were limits on the amount of space available for cultivation, caps on the total number of cultivated marijuana, as well as requirements for labeling and child-resistant packaging.¹⁷¹ The rules took effect on November 16, 2013,¹⁷² and the Liquor Control Board currently lists

http://www.upi.com/Top_News/US/2014/05/09/Colorado-generates-over-25M-in-marijuana-revenue-since-legalization/1981399662232/.

164. Jack Healy, *Up Early and in Line for a Marijuana Milestone in Colorado*, N.Y. TIMES, Jan. 1, 2014, http://www.nytimes.com/2014/01/02/us/colorado-stores-throw-open-their-doors-to-pot-buyers.html?hp&_r=0.

165. 2013 Wash. Sess. Laws 28.

166. *Id.*

167. *Id.*

168. WASH. STATE LIQUOR CONTROL BD., INITIATIVE 502’S IMPACT ON THE WASHINGTON STATE LIQUOR CONTROL BOARD (NOV. 19, 2012), *available at* <http://www.liq.wa.gov/publications/Marijuana/I-502/Fact-Sheet-I-502-REVISED-11-19-12.pdf>.

169. *Id.*

170. *Id.* See *Board Approves Filing of Proposed Rules to Implement Initiative 502*, WASH. STATE LIQUOR CONTROL BD. (Sept. 4, 2013), *available at* http://liq.wa.gov/pressreleases/board_approves_filing_of_proposed_rules_to_implementation_initiative_502_sept_4%20.

171. WASH. STATE LIQUOR CONTROL BD., *supra* note 168.

172. *Id.*

334 retail marijuana outlets registered with the state.¹⁷³ Commercial sales, however, will likely not begin until July 2014.¹⁷⁴

B. The Single Convention versus Marijuana Legalization

Predictably, the developments in Uruguay and the United States have not received a warm reception from proponents of the Single Convention. In the case of Uruguay, the INCB warned prior to passage that the legalization bill “would be in complete contravention to the provisions of the international drug control treaties” and would have “serious consequences for the health and welfare of the population and for the prevention of cannabis abuse among the young.”¹⁷⁵ After passage, the INCB chastised Uruguay for “knowingly decid[ing] to break the universally agreed and internationally endorsed legal provisions of the treaty.”¹⁷⁶

The U.S. State Department also cautioned Uruguay against ignoring its international commitments,¹⁷⁷ which serves to illustrate the conflicted position of the United States in relation to the Single Convention, considering the INCB has made similar comments in regard to the legalization programs in Washington and Colorado. Although less dramatic than its warnings to Uruguay, the INCB voiced “grave concern” over the referenda and stressed that member states have an obligation to “ensure their full compliance with the conventions within their entire territory, including federated states and/or provinces.”¹⁷⁸ The INCB reiterated this point several months later.¹⁷⁹

173. *Retail Store Locations*, WASH. STATE LIQUOR CONTROL BD., <http://www.liq.wa.gov/publications/Marijuana/I-502/I-502-Retail-Store-Locations-II-9-03-13.xlsx>.

174. Rachel La Corte, *Washington Prepares for Marijuana Retail Sales*, THE NEWS TRIBUNE, June 24, 2014, <http://www.thenewstribune.com/2014/06/24/3259719/washington-prepares-for-marijuana.html?sp=99/289/&ihp=1>.

175. Press Release, Int’l Narcotics Control Bd., INCB President Urges Uruguay to Remain Within the International Drug Control Treaties, Noting Draft Cannabis Legislation (Aug. 1, 2013), *available at* http://incb.org/documents/Publications/PressRelease/PR2013/press_release010813.pdf.

176. Press Release, Int’l Narcotics Control Bd., Uruguay is Breaking the International Conventions on Drug Control with the Cannabis Legislation Approved by its Congress (Dec. 11, 2013), *available at* http://www.incb.org/documents/Publications/PressRelease/PR2013/press_release_111213.pdf.

177. Forero, *supra* note 140.

178. Press Release, Int’l Narcotics Control Bd., INCB President Voices Concerns About the Outcome of Recent Referenda About Non-Medical Use of Cannabis in the United States in a Number of States (Nov. 15, 2012), *available at*

Despite this warning, some commentators have argued that the Single Convention has no bearing on the actions of individual American states, because they are not themselves parties to the treaty.¹⁸⁰ However, the INCB obviously does not agree with that interpretation and has previously requested that the United States “take effective measures to ensure the implementation of all control measures for cannabis plants and cannabis” in response to existing and possible medical marijuana and decriminalization laws.¹⁸¹

Moreover, the fact that the U.S. Department of Justice (DOJ) announced in August 2013 that it would allow the Colorado and Washington laws to go into effect without challenging them would seem to seriously complicate any claim that the Single Convention has not been implicated,¹⁸² and raises significant questions about the federal government’s commitment to the treaty. Specifically, the DOJ has stated that it will not sue Colorado or Washington, or attempt to enforce marijuana prohibition in their territories, so long as eight requirements are met, including preventing use by minors, keeping marijuana out of interstate commerce, and stopping the sale of

http://www.incb.org/documents/Publications/PressRelease/PR2012/press_release_151112.pdf.

179. Press Release, Int’l Narcotics Control Bd., INCB President Calls on the United States Government to Address Initiatives Aimed at Permitting Recreational Drug Use (Mar. 14, 2013), *available at* http://www.incb.org/documents/Publications/PressRelease/PR2013/press_release140313.pdf (“[T]he United States has a treaty obligation to ensure the implementation of the treaties on the entirety of its territory.”).

180. See Jacob Sullum, *An Anti-Drug Treaty Cannot Authorize the Feds to Make States Ban Marijuana*, REASON.COM (Nov. 23, 2012, 9:49 AM), <http://reason.com/blog/2012/11/23/a-treaty-cannot-authorize-the-feds-to-make-states-ban-marijuana> (pointing out that the federal government cannot dictate state drug laws); see also Keith Humphreys, *Can the United Nations Block U.S. Marijuana Legalization?* HUFFINGTON POST, (Sept. 25, 2013, 10:04 AM), [http://www.huffingtonpost.com/keith-humphreys/can-the-united-nations-bl_b_3977683.html](http://www.huffingtonpost.com/keith-humphreys/can-the-united-nations-block-u-s-marijuana-legalization/) (noting that the United States government, not the governments of the individual states, is a signatory to the drug control treaty).

181. INT’L NARCOTICS CONTROL BD., *supra* note 76, at 66. (“The Board notes that the control requirements that have been adopted in the 17 states in question and in the District of Columbia under the ‘medical’ cannabis schemes fall far short of the requirements set forth in articles 23 and 28 of the 1961 Convention as amended by the 1972 protocol.”).

182. Memorandum from James M. Cole, Deputy Attorney General, on Guidance Regarding Marijuana Enforcement (Aug. 29, 2013), *available at* <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>.

marijuana from benefitting criminals.¹⁸³ In addition, the DOJ and the Treasury Department have released guidelines for banks to legally provide financial services to legal marijuana retailers¹⁸⁴ and the U.S. House of Representatives has voted to stop the federal government from interfering with state medical marijuana programs.¹⁸⁵ The INCB responded to the new DOJ memorandum in its 2013 report by simply noting that “[t]he Board wishes to reiterate that the 1961 Convention limits the use of cannabis to medical and scientific purposes within the strict conditions set forth in the Convention”¹⁸⁶ and by “urg[ing] the Government of the United States to continue to ensure the full implementation of the international drug control treaties on its entire territory.”¹⁸⁷

IV. FUTURE CHALLENGES TO THE SINGLE CONVENTION

In recent years, the INCB has faced significant hurdles in enforcing the Single Convention. From Bolivia’s coca leaf reservation to Uruguay’s legalization of marijuana, the Single Convention has teetered between respected international law and a symbolic arrangement lacking a real sense of legitimacy. While the INCB has arguably done its best to harmonize its statutory obligations with the reality of 184 countries individually addressing drug control issues, this balancing act is set to be further challenged in coming years.

A. *Criticism and Legalization Efforts*

Latin America, which has borne the brunt of drug-related violence, is home to several former and current leaders, in addition to the presidents of Bolivia and Uruguay, willing to question the Single Convention’s drug control paradigm. Vicente Fox, former president of Mexico from 2000 to 2006, has pressed for the legalization of the production, transit, and sale of all drugs.¹⁸⁸ Since 2011, the current

183. *Id.*

184. Pete Yost, *Gov’t Lets Banks, Marijuana Sellers Do Business*, HUFFINGTON POST (Feb. 14, 2014, 10:40 P.M.), <http://www.huffingtonpost.com/huff-wires/20140214/us--legalizing-marijuana-banks/>.

185. Susan Heavey, *U.S. House OKs Plan to Protect State Medical Marijuana Laws*, REUTERS, May 30, 2014, <http://www.reuters.com/article/2014/05/30/usa-politics-marijuana-idUSL1N0OG1EU20140530>.

186. INT’L NARCOTICS CONTROL BD., *supra* note 82, at 49.

187. *Id.* at 96.

188. Ioan Grillo, *Mexico’s Ex-President Vicente Fox: Legalize Drugs*, TIME (Jan. 19, 2011), <http://content.time.com/time/world/article/0,8599,2040882,00.html>.

president of Guatemala, Otto Perez Molina, has been calling for changes to the Single Convention and has lauded legalization programs, such as those in Washington and Colorado.¹⁸⁹ Mexico decriminalized the possession of small amounts of drugs in 2009,¹⁹⁰ and lawmakers in Mexico City are considering using that country's system of federalism to decriminalize and regulate marijuana within the city limits.¹⁹¹ More recently, Mexican President Enrique Peña Nieto suggested that the national legalization of marijuana should be considered.¹⁹² Lawmakers in Puerto Rico, Chile, Belize, Barbados, and Trinidad and Tobago are reportedly drafting marijuana legalization plans.¹⁹³ Elsewhere, the Moroccan Parliament has considered legalizing marijuana cultivation,¹⁹⁴ and the leader of one of Canada's main opposition parties now favors full legalization.¹⁹⁵ The Jamaican government announced plans to decriminalize possession of small amounts of marijuana in June 2014.¹⁹⁶

Another former president of Mexico, Ernesto Zedillo, co-authored a report in 2009 with the former president of Brazil Fernando Henrique Cardoso and the former president of Colombia

189. Alfonso Serrano, *Guatemala President to UN: Reform Global Drug Policy*, AL JAZEERA AMERICA (Sept. 26, 2013, 3:30 PM), <http://america.aljazeera.com/articles/2013/9/26/guatemalan-presidentcallsfordrugpolicyreformatungeneralassembly.html>.

190. Ioan Grillo, *Mexico's New Drug Law May Set an Example*, TIME (Aug. 26, 2009), <http://content.time.com/time/world/article/0,8599,1918725,00.html>.

191. Ioan Grillo, *North America's Largest City Moves to Legalize Pot*, TIME (Oct. 14, 2013), <http://world.time.com/2013/10/14/north-americas-largest-city-moves-to-legalize-pot/>.

192. Dave Graham, *Mexican President Hints May be Open to Change in Marijuana Laws*, REUTERS, June 8, 2014, <http://www.reuters.com/article/2014/06/08/us-mexico-drugs-idUSKBN0EJ0UE20140608>.

193. Nicholas Casey, *Uruguay Legalizes Pot, Recasting Drug War*, WALL ST. J., Dec. 11, 2013, at A13.

194. Souhail Karam, *Morocco's Marijuana Farms May Become Legal*, BLOOMBERG BUSINESSWEEK (Aug. 1, 2013), <http://www.businessweek.com/articles/2013-08-01/moroccos-marijuana-farms-may-become-legal>.

195. Daniel Leblanc & Sunny Dhillon, *Trudeau's Legalization Stand Set to Revive Debate on Cannabis*, GLOBE AND MAIL, Jul. 25, 2013, <http://www.theglobeandmail.com/news/politics/trudeaus-renewed-call-for-legalized-marijuana-sparks-backlash-from-conservatives/article13426993/>.

196. Horace Helps, *Jamaica to Decriminalize Personal Marijuana Possession*, REUTERS, June 12, 2014, <http://www.reuters.com/article/2014/06/13/us-usa-jamaica-marijuana-idUSKBN0EO00120140613>.

César Gaviria in which they identified the war on drugs and prohibitionist policies as failures.¹⁹⁷ They also joined another report in 2011 that called for the legalization of some drugs.¹⁹⁸ The former presidents were joined on that report by former UN Secretary-General Kofi Annan, former U.S. Secretary of State George Schultz, former EU foreign policy chief Javier Solana, former Federal Reserve chief Paul Volcker, and former Swiss President Ruth Dreifuss, among others.¹⁹⁹ The call for legalization was reiterated in a similar 2013 report arguing that the war on drugs has failed to reduce the supply or use of drugs, and has instead contributed to HIV and hepatitis pandemics.²⁰⁰ Likewise a 2014 report issued by the West African Commission on Drugs, which is chaired by a former Nigerian president and is comprised of several other former West African leaders, called for the “decriminalization of drug use and low-level non-violent drug offences.”²⁰¹

At the same time that the Single Convention has come under increasing elite criticism, it seems poised to be further undermined by one of its most fervent champions: the United States. Specifically, several states are likely to follow Colorado and Washington in enacting state-level marijuana legalization programs. Alaska will hold a referendum on marijuana legalization in August of 2014,²⁰² and recent polling has found over 50 percent support for the

197. Fernando Henrique Cardoso et al., Op-Ed., *The War on Drugs Is a Failure*, WALL ST. J., Feb. 23, 2009, at A15.

198. *Global War on Drugs ‘Has Failed’ Say Former Leaders*, BBC NEWS (June 2, 2011), <http://www.bbc.co.uk/news/world-us-canada-13624303>; GLOBAL COMM’N ON DRUG POLICY, *THE NEGATIVE IMPACT OF THE WAR ON DRUGS ON PUBLIC HEALTH: THE HIDDEN HEPATITIS C EPIDEMIC* (2013), available at http://www.globalcommissionondrugs.org/hepatitis/gcdp_hepatitis_english.pdf.

199. GLOBAL COMM’N ON DRUG POLICY, *supra* note 198; Sara Miller Llana, *Kofi Annan, George Schultz Say Drug War a Failure*, CHRISTIAN SCIENCE MONITOR (June 3, 2011), <http://www.csmonitor.com/World/Americas/2011/0603/Kofi-Annan-George-Shultz-say-drug-war-a-failure>.

200. Specifically, the 2013 report included a reprinted copy of the Commission’s 2011 recommendation to “[e]ncourage experimentation by governments with models of legal regulation of drugs. . . .” GLOBAL COMM’N ON DRUG POLICY, *supra* note 198.

201. WEST AFRICAN COMM’N ON DRUGS, *NOT JUST IN TRANSIT: DRUGS, THE STATE AND SOCIETY IN WEST AFRICA* 56 (2014), available at http://www.wacommissionondrugs.org/WACD_report_June_2014_english.pdf.

202. William M. Welch, *Alaska Moves Toward August Vote on Legal Pot*, USA TODAY, Feb. 4, 2014, <http://www.usatoday.com/story/news/nation/2014/02/04/alaska-marijuana-ballot/5210613/>.

measure.²⁰³ Efforts are also under way to gather signatures for legalization ballot initiatives in Oregon²⁰⁴ and the District of Columbia.²⁰⁵ Advocates in California will attempt to put a legalization question on the ballot in America's most populous state in 2016.²⁰⁶ Although voters rejected a similar initiative in 2010, a recent poll put support for legalization at 60 percent.²⁰⁷ Commentators have pointed to Arizona, Maine, Massachusetts, Montana, Nevada, and Vermont as other states likely to legalize marijuana soon,²⁰⁸ while public polling has found majority support for legalization in others states, including Maryland²⁰⁹ and New York.²¹⁰

Moreover, on a national level, Americans have increasingly turned away from marijuana prohibition. In 2011, Gallup found that

203. *Alaska Miscellany*, PUB. POL'Y POLLING (Feb. 5, 2014), <http://www.publicpolicypolling.com/main/2014/02/alaska-miscellany.html#more>.

204. Jeff Mapes, *With National Backing, Marijuana Advocates File Legalization Measure*, OREGONIAN, Oct. 25, 2013, http://www.oregonlive.com/mapes/index.ssf/2013/10/with_national_backing_marijuan.html.

205. Aaron C. Davis, *D.C. Elections Board Allows Marijuana Legalization Effort to Move Forward*, WASH. POST, March 11, http://www.washingtonpost.com/local/dc-politics/dc-elections-board-allows-marijuana-legalization-effort-to-move-forward/2014/03/11/7821db7c-a402-11e3-84d4-e59b1709222c_story.html.

206. Maria L. La Ganga, *California Ballot Measure on Pot Legalization Delayed Until 2016*, L.A. TIMES (Feb. 18, 2014), <http://www.latimes.com/nation/la-na-pot-measure-20140218,0,3213398.story#axzz2tdEtCRUG>.

207. Lydia O'Connor, *Most Californians Support Marijuana Legalization, Says Poll*, HUFFINGTON POST (Sept. 27, 2013, 9:05 P.M.), http://www.huffingtonpost.com/2013/09/27/california-marijuana-legalization_n_4005646.html.

208. *See, e.g., id.* (listing states where marijuana legislation is being or has been considered); Fabien Tepper, *Colorado Marijuana Sales: Long Lines for Smooth Rollout of Legal Business*, CHRISTIAN SCI. MONITOR (Jan. 2, 2014), <http://www.csmonitor.com/USA/USA-Update/2014/0102/Colorado-marijuana-sales-Long-lines-for-smooth-rollout-of-legal-business> (indicating several states that could consider marijuana ballot measures by 2016).

209. *Maryland Survey Results*, PUB. POL'Y POLLING (Sept. 29, 2013), <http://www.mpp.org/assets/pdfs/download-materials/Maryland-Poll-Results.pdf> (showing support at sixty-eight percent).

210. Press Release, Quinnipac Univ. Polling Inst., New York Voters Back Medical Marijuana 10-1, Quinnipac University Poll Finds; Strong Support for Recreational Marijuana Also (Feb. 17, 2014), *available at* http://www.quinnipiac.edu/images/polling/ny/ny02172014_b1s5tv.pdf/ (indicating that fifty-seven percent of New York residents support the legalization of small amounts of marijuana).

50 percent of Americans favored legalization.²¹¹ By 2013, support had climbed to 58 percent,²¹² while a Pew survey found 52 percent in favor of legalization.²¹³ A CNN poll in early 2014 found support for legal marijuana sales standing at 54 percent, and support for legalizing the use of marijuana at 55 percent.²¹⁴ In addition, a 2012 Gallup poll found that 64 percent of American adults thought that the federal government should not take steps to enforce federal marijuana laws in states where it has been legalized.²¹⁵ In light of these developments, it is now evident that the question is not whether other states will legalize marijuana, but rather what state will do it next.

B. A Choice Between Possible Failure and Probable Failure

The current drug control policy dynamics make clear that the Single Convention and the INCB are fighting a losing war. The international trend is unquestionably toward more lenient approaches to at least some drugs, particularly marijuana. As such, supporters of the Single Convention are stuck between two unpleasant options. First, they could continue to stand by the current Convention in an attempt to stop further legalization efforts, but that would risk failure and possible irrelevancy for the treaty. On the other hand, supporters could cede partial defeat, most likely in the form of accepting some marijuana legalization, which could theoretically open the door to further attacks against the Single Convention's provisions. For supporters of the Single Convention, this may feel like being stuck between a rock and a hard place. But when viewed objectively it is far more equivalent to choosing between defeat and a tactical retreat.

Neither approach is a sure success, but the current model under the Single Convention is simply untenable. The INCB has relied exclusively on "naming and shaming" offending countries, to little

211. Frank Newport, *Record-High 50% of Americans Favor Legalizing Marijuana Use*, GALLUP (Oct. 17, 2011), <http://www.gallup.com/poll/150149/Record-High-Americans-Favor-Legalizing-Marijuana.aspx>.

212. Art Swift, *For First Time, Americans Favor Legalizing Marijuana*, GALLUP (Oct. 22, 2013), <http://www.gallup.com/poll/165539/first-time-americans-favor-legalizing-marijuana.aspx>.

213. *Majority Now Supports Legalizing Marijuana*, PEW RES. CENTER FOR THE PEOPLE & THE PRESS (Apr. 4, 2013), <http://www.people-press.org/2013/04/04/majority-now-supports-legalizing-marijuana/>.

214. *CNN|ORC Poll*, CNN (Jan. 6, 2014), <http://i2.cdn.turner.com/cnn/2014/images/01/06/cnn.orc.poll.marijuana.pdf>.

215. Frank Newport, *Americans Want Federal Gov't out of State Marijuana Laws*, GALLUP (Dec. 10, 2012), <http://www.gallup.com/poll/159152/americans-federal-gov-state-marijuana-laws.aspx>.

avail.²¹⁶ Its only other option would be to recommend a drug embargo,²¹⁷ but its success, and even acceptance, would be highly uncertain, particularly in cases with the United States or when the violation involves less stigmatized substances, such as marijuana. As such, the INCB's current approach results in options that would do little more than make the INCB and the Single Convention appear ineffective and meaningless.

Stuck in this losing situation, supporters of the Single Convention, if they want to maintain some semblance of the current drug regime, should cede the battle in an attempt to salvage the war. Its supporters should be open to amendments for the legal regulation of certain substances and to permit greater flexibility on the domestic level. Specifically, they should use the experience with Bolivia as a rough template whereby a new protocol, reservations, or amendments can be used as a safety valve for national reform movements.

Bolivia legalized the use of coca leaves prior to any adjustments in its relation to the Single Convention. Its actions were in obvious contravention of the treaty, but the government was clearly not deterred by that reality. Indeed, the only real question in relation to the coca leaf legalization effort was whether Bolivia would be allowed to re-adhere and comply with the rest of the treaty or be removed completely from the agreement. A strict approach to the Single Convention would have undoubtedly led to the latter of these scenarios, if not an attempted embargo, while the former, which did occur, struck a balance between respecting Bolivians' historical use of the coca leaf with the international obligation of preventing the production, transportation, and possession of processed cocaine. In this way, the new reservation served as a safety valve allowing for the use of coca leaves, while cutting off momentum for any further contempt or efforts against the Single Convention.

A comparable, ideally standardized, approach to marijuana for countries such as Uruguay would serve a similarly appropriate purpose. Namely, countries desiring to reform their drug laws would be effectively permitted to do so, while being required to enforce the rest of the Single Convention. This would sanction, without endorsing, reforms that would take place regardless of the treaty, as

216. INT'L DRUG POLICY CONSORTIUM, *supra* note 71, at 3.

217. *Id.*

witnessed in Bolivia, Uruguay, Colorado, and Washington, while respecting the remainder and overarching purpose of the Single Convention. Although hardly ideal for supporters of the treaty, the alternative would likely result in countries leaving the Single Convention as a whole, or, as now appears to be the case, remaining party to the agreement while flagrantly disregarding portions of their obligations.

This paper's suggested reforms would be best accomplished through the adoption of a protocol allowing for some of the Single Convention's strictly prohibition-based requirements to be replaced with specific goal-based obligations. Those goals could include reducing drug-related violence, levels of addiction, and criminal trafficking, and individual countries would be free to choose their own means for reaching them. Such a protocol would create the opportunity for countries to attempt to address these serious problems through avenues other than prohibition and criminal sanctions, including decriminalization or legalization. The protocol could be limited to specific substances, such as marijuana, without removing all of the Single Convention's prohibition-based requirements. Moreover, it would have the benefit of allowing for experimentation in some countries, while allowing others to maintain the strictly prohibitory policies found in the Single Convention.²¹⁸ This flexibility would be preferable over a full amendment changing the requirements for all parties, as well as the re-adherence strategy followed by Bolivia, which is open to more abuse and inconsistency.

However, regardless of the method, allowing for more flexibility on the national level would not compel total abandonment of the Single Convention. Rather, it would require the courage to say that times have changed, and that our international drug policies need to adapt accordingly. Such a shift would not only bolster the INCB's credibility and protect the Single Convention from sustained attacks of rigidity and irrelevance, but also could lead to more effective and humane solutions to the problems associated with drug trafficking and abuse.

218. Protocols, as opposed to amendments, need not be adopted by every party to the original treaty. Instead, some parties may adopt the new protocol and its obligations, while other member states do not adhere and remain bound solely by the original agreement. See David Favre, *An International Treaty for Animal Welfare*, 18 ANIMAL L. 237, 254–55 (2012) (discussing the nature of role of protocols as compared to traditional treaties); see, e.g., Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, 2303 U.N.T.S. 148 (1998).

CONCLUSION

This paper does not call for a total revamp of the Single Convention. It does not even call for the removal from international control of any substances, although such a change may be necessary in coming years. Instead, what it does suggest is that supporters of the Single Convention recognize the current trends in the drug reform movement. In doing so, they should use the example of Bolivia and coca leaves as a basic, if procedurally imperfect, template for how to address changing cultural norms and policies. A new protocol or a new process for creating reservations or amendments for some use of certain substances would be a historic step, but would be no more radical than recognizing what is already occurring and likely to continue occurring under the current system and the INCB's watch.

In making this recommendation, it should be emphasized that this suggestion is not based on ideology or animosity, but rather in the unmistakable evidence that international drug prohibition has not accomplished its goals, and that further forms of legalization appear all but inevitable. The INCB and other international actors have been unable to address the global drug problem in terms of use or trafficking. As an outgrowth of this failure, the INCB has also been unable to stop member states from experimenting with alternatives to prohibition, including drug decriminalization and legalization.

Continued inflexibility will not change this outcome, but would rather undermine the Single Convention, and international law in general. Accordingly, it would be in the best interest of the Single Convention's supporters to create a new protocol allowing for limited reforms along the lines of those taking place in Bolivia, Uruguay, the United States, and other countries. Accepting this recommendation will require serious concessions, but failure to recognize the changing status of drug reform bears much greater risks. Many policymakers and members of the public have already appreciated this shift, and change is coming, and will continue to come, with or without the Single Convention. With the weight of elite criticism and public opinion building, the only question now is whether the Single Convention's supporters think it is better for that treaty to bend, or to break.