



universität
wien

DIPLOMARBEIT

Titel der Diplomarbeit

„The Coca-leaf: Miracle Good or Social Menace?“

Cultural and identity rights of Andean Indigenous People in International
Law and in context with the international drug conventions

Band 1 von 5 Bänden

Verfasserin

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angestrebter akademischer Grad

Magistra (Mag.)

Wien, 2010

Studienkennzahl lt. Studienblatt:

A 057 390

Studienrichtung lt. Studienblatt:

Internationale Entwicklung

Betreuer:

ao. Univ.- Prof. Dr. iur. René Kuppe

Acknowledgements

In the academic field I would like to express my thanks to ao.Univ.-Prof. Dr. iur. René Kuppe for his supportive thesis supervision, his insightful suggestions and advice and his unrelenting expert support of my research.

Furthermore, my thanks go to the staff members from the Latin American and the Caribbean Unit (LACU), Division for Operations (DO), United Nations Office on Drugs and Crime (UNODC) for their continuous support, which enabled me to get access to various very important sources and provided this thesis with paramount information. I would also like to thank Pien Metaal, from the Transnational Institute (TNI) in Amsterdam, Coletta A. Youngers, from the Washington Office on Latin America (WOLA), Thomas Pietschmann from UNODC and Robert Lessmann, for their time and cooperation. The expert interviews with them have been one of the core elements for my research and data collection and gave me practical insight, broadened my horizon and provided the thesis with the day-to-day expert experience, which is highly relevant especially for my topic. Additionally, I would like to pronounce special thanks also to the Vice Ministry of Social Defence and Controlled Substances in Bolivia, for supplying me with fundamental data I would have not been able to access without their cooperation.

In the personal realm I would like to thank my parents, Martina and Josef Heitzeneder for their great support, without which neither my studies nor my thesis would have been possible; and all my relatives and friends, in particular Elisabeth Keimelmayr and Charles O. Uboh, who gave special encouragement and continuous advice to this work.

Abstract

I came up with the topic for my thesis during my Internship at the United Nations Office on Drugs and Crime (UNODC) in Vienna, as I became aware of the challenges Indigenous People face every day in claiming their human rights in their respective countries, concerning their tradition and culture, especially when it comes to cultural, religious and traditional elements, like the coca-leaf, which are alien to the industrialized western world.

I will discuss the ongoing efforts of Groups and Associations of Indigenous People to erase the coca leaf from the list of prohibited substances in the Report of the Commission of Enquiry on the Coca Leaf in 1950, claiming their right of traditional use of the “hoja de coca” for religious and cultural habits, as an essential economic good, paramount for their economic survival and minimum standard of living. They thus claim to be violated in their specific human rights through the international oppression of the coca leaf.

As a basis for discussion, the relevant International Treaties and Conventions on Narcotic Drugs¹ on the one hand, and on the Rights of Indigenous People², on the other hand, will be analyzed and related to each other. Discrepancies and inconsistencies with regard to the oppression of the coca-leaf and the claimed guarantee of human rights and liberties will be revealed and put into the context of the topic.

I further more intend to give a thorough description of the history of the coca-leaf in indigenous societies, of its traditional ways of use and its meaning to the Andean world view. Additionally, I will intend to analyze its positive and negative effects on the human body, relying on scientific as well as genuinely indigenous information on the leaf. A paramount goal is, to strongly distinguish the coca-leaf from its derivate “cocaine”, for which the leaf itself has been depreciated and fought against now for decades.

In my thesis, I will try to study the possible economic capacity underlying a decriminalisation of the coca-leaf and its legal derivatives (i.e. mate de coca, coca tea), which would open the international markets to this special agrarian Andean product and thus give the Indigenous and *campesino* communities a new opportunity of self-development for themselves and consequently for their region and their countries.

¹ The Single Convention on Narcotic Drugs 1961, The Convention on Psychotropic Substances 1971 and the United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 and other regional Conventions and Treaties.

² The United Nations Covenant on Social, Economic and Cultural Rights, The Declaration on the Rights of Indigenous Peoples (2007) and the ILO Convention 167, as well as regional Treaties.

The two Andean countries Bolivia and Peru are among the major coca leaf producers in the world and have a highly dense population on Indigenous People. Recently, there have been important changes in the political order and perception of the coca leaf and Traditional Rights of Indigenous People in Bolivia (with Evo Morales representing a popular figure in the fight for appropriate legal recognition of the traditional use of the coca plant in the Andean society).

The aim of my thesis will be to show, that serious human rights violations on Indigenous People have been committed throughout or in the name of the *War on Drugs* and that the rights of the Indigenous People, mainly their economic and cultural rights, are still being violated in a variety of elements, relating to their traditional use of the coca leaf, their way of subsistence economy, as well as in the context of such basic rights like the right to food and adequate standard of living.

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List of Abbreviations

AOAC	Association of Analytical Communities
ATPDEA	Andean Trade Promotion and Drug Eradication Act
BBC	British Broadcasting Corporation
BFDPP	The Beckley Foundation Drug Policy Programme
CAOI	Andean Coordinator of Indigenous Organizations
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or Committee against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women or Committee on the Elimination of All Forms of Discrimination against Women
CEDRO	Centro de Información y Educación para la Prevención del Abuso de Drogas
CELIN	Centro Latinoamericano de Investigación Científica
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CHR	Commission on Human Rights
CND	Commission on Narcotic Drugs
CRC	Convention on the Rights of the Child or Committee on the Rights of the Child
DEA	U.S. Drug Enforcement Administration
DO	Division for Operations
DW	Dry Weight
ECOSOC	Economic and Social Council
ENACO	Empresa Nacional de la Coca (Peru)
GA	General Assembly (of the United Nations)
HCL	Hydrochloride (Cocaine)
HRC	Human Rights Committee
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Covenant on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice

IHRA	International Harm Reduction Association
IIN	Instituto de Investigación Nutricional
ILA	International Law Association
ILO	International Labour Organisation
INCB	International Narcotics Control Board
INTERPOL	International Criminal Police Organisation
IPO	International Peace Observatory
IWGIA	International Work Group for Indigenous Affairs
LACU	Latin America and the Caribbean Unit
LAI	Lateinamerikanisches Institut
MDG	United Nations Millennium Development Goals
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
OP	Optional Protocol
PSA	Programme on Substance Abuse (from the World Health Organisation)
SEAMOS	Sistema Educativo de Acción y de Movilización Social
TDPF	Transform Drug Policy Foundation
TNI	Transnational Institute
UDHR	Universal Declaration of Human Rights
UMOPAR	Unidad Móvil Policial para Áreas Rurales ³
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNDCP	United Nations Drugs Control Programme
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNESCO	United Nations
UNICRI	United Nations Interregional Crime and Justice Research
UNODC	United Nations Office on Drugs and Crime
UNPFII	United Nations Permanent Forum on Indigenous Issues
UNPO	Unrepresented Nations and Peoples Organization
UNWGIP	United Nations Working Group on Indigenous Populations
WCIP	World Council of Indigenous Peoples
WGDD	Working Group on the Draft Declaration on the Rights of Indigenous

³ UMOPAR is a subsidiary body of the Special Narcotics Force (FELCN - Fuerza Especial de Lucha Contra el Narcotráfico) of the Bolivian Police.

Peoples

WHO World Health Organization

WOLA Washington Office on Latin America

1. Introduction

In the course of history, Indigenous People all over the world have faced massive discrimination and violation of their rights as first, human beings, and second, a people with special collective rights. Indigenous people have been deprived of their right to their traditional lands and territories, traditional practices, customs and culture. They have been forcefully assimilated to live in nation-states, which has caused a situation proving to be in many ways alien to their inherent way of living and their cosmology. The *structural inequalities* that initiated and led to these violations of their human rights and dignity are deeply rooted in contemporary societies (see Stavenhagen 2009: 352). Up until the present day, these inequalities continue to determine the situation and life of Indigenous People in nation-states and on a global level.

One structural inequality in this context is the standing of the coca leaf, a traditional cultural good of Andean indigenous society, in International Law. The natural plant and its consumption are, on an international and partially also national scale, penalized and criminalized, through the development and establishment of the international drug control mechanism and the respective international treaties of the United Nations. Yet, the coca leaf is an integral and highly important part of the pre-colonial Andean indigenous culture that still endure, in particular in the Andean highland regions of Peru, (the Plurinational state of) Bolivia and (to a lesser extent) Colombia, Ecuador and north-western Argentina (see TNI 2008: 38). The leaves of the natural plant have since millennia been used for traditional practices, including medicinal, therapeutic, cultural and religious patterns of use. Especially coca-chewing is a wide-spread indigenous custom, performed in quotidian Andean traditional life.

However, the coca leaf is also the sole raw material for the production of illicit cocaine. Thus, coca cultivation, production and even traditional consumption – in spite of the incomparableness of natural coca with its derivatives – have come under fire by the international drug control policies and conventions. The results are fatal. The *war on drugs* caused massive human rights violations on indigenous individuals and the international drug control mechanism, including the conventions and the rhetoric of the leading international agencies and bodies in the field, has shown a discriminative and stigmatising policy against Andean indigenous culture and identity. What is more, they represent a breach with the international human rights system from a legal perspective.

Thesis Overview

In the approach of the whole discussion surrounding the coca leaf as a central element in Andean indigenous culture and identity, its relevance to the Indigenous People, and in context with the international legislation on coca and related substances, the theoretical backdrop of this thesis is drawn from the growing debate in International Law on the topic of Indigenous People as holders of special collective rights and their relationship with the international human rights regime. With regard to this, the focus is put on provisions related to human rights of Indigenous People, especially indigenous cultural and identity rights, on the one hand, and the international drug control mechanism and legislation on the other. The legal instruments on the international level that I use to argue for the respect and protection of indigenous cultural rights (the right to traditional coca use) and the analysis of their standing and relationship to the drug control conventions are:

1. The developing corpus of international human rights treaties and (draft) declarations: The Declaration on the Rights of Indigenous Peoples; ILO Conventions No. 107 and No. 169; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Universal Declaration of Human Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Rights of the Child; the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; Universal Declaration on Cultural Diversity;
2. The Opium Conventions, the United Nations Single Convention on Narcotic Drugs and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;
3. The directives, communications and reports of international organisations and institutions (such as those of the Permanent Forum on Indigenous Issues, the Working Group on Indigenous Populations and the international law association – and also the United Nations Office on Drugs and Crime and the Commission on Narcotic Drugs) and of human rights bodies (such as the UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, the UN High Commissioner for Human Rights, the former UN Commission on Human Rights and the UN Human Rights Council)

and of treaty monitoring bodies (such as the UN Human Rights Committee; the UN Committee on Economic, Social and Cultural Rights; the UN Committee on the Elimination of Racial Discrimination and the International Narcotics Control Board and the UN Committee on the Rights of the Child);

3. Relevant official requests and pending procedures in international law.

The main goal of the thesis is to link the international (UN) practice and policies on coca and the consequential international control and prohibition of the substance with international law concepts on Indigenous People and especially indigenous culture, identity and tradition. With this, an analysis of the international community's view and opinion on the traditional indigenous coca use and consumption shall be provided. The overall research points are:

1. To identify from a critical perspective the key developments in international law with respect to the world drug control and outline its impacts and consequences on the rights of (Andean) Indigenous People. Key aspects of this discussion will be the stigmatization and discrimination of their culture and tradition.
2. To identify the historical and current actual meaning of coca to Andean indigenous cultures and communities and its significance in traditional, religious and cultural practices and rituals, medicine, as well as nutritional values and properties.
3. To compare the international drug control provisions with the international human rights (general and of Indigenous People) provisions, analyse and pinpoint their problematic relationship, possible human rights violations and related discrepancies in International Law.

The spectrum of this work is to a large extent characterized by speaking about indigenous beliefs, tradition, culture, religion, values and histories and also legal issues without being indigenous myself. I am certainly aware of the dichotomies this precondition implies. In social research it has inter alia been argued that only members of a community can speak about themselves truly, and hence, only Indigenous People can speak about indigenous issues. But this assumption has again been criticized as overall romantic, in believing that only Indigenous People have the possible means to understand and speak about the social issues affecting their communities and countries (see Scheyvens/ Storey 2003: 4). Next to the

attempt to give full consideration to indigenous issues concerning the coca leaf (legal, cultural, traditional and with respect to identity), I have also tried to keep an objective perspective and standing in the human rights discussion of International Law provisions. Yet, full objectivity of a work by a human being is probably a utopian concept and personal opinions might have indirectly influenced the content of this paper.

Next to the research outcome and scientific findings, this paper should contribute to the growing debate in the academic field and in international policy surrounding legal issues of the coca leaf and human rights of Indigenous People, with regional focus on the Andes. It is my aspiration to give yet another plea for international human rights protection of Indigenous People, while giving due account to the necessities of a global drug control system and its implications on individual as well as collective rights of peoples. The institution in the core of my analysis is hence the United Nations, which embraces both of these two concepts in its organisation and work.

Taking this into consideration, the central research question is twofold: Is there a clash between the international human rights treaties and instruments on Indigenous People in particular and the international drug control treaties with respect to their coca policy - and if so, what are the possible means for indigenous human-rights based adjustment and harmonization?

Further sub-questions related to this are:

- Which status do indigenous cultural and identity rights have in International Law and what are the fundamental requirements for the protection of those rights?
- Which human rights do the Andean indigenous people have as indigenous peoples/minorities? With respect to coca, are these laws being recognized, protected and tolerated in the international legal sphere? If not, where are the loopholes?
- What does the coca leaf represent to Andean Indigenous People and is there a historic genesis and continuity of coca as a cultural and traditional element for the people?
- How has the international regime on drug control developed and changed over the years and what are the consequences in the reality, on the field?
- Is the inclusion of coca as one of the prohibited substances and thus a substance under international control justifiable from a scientific and human rights based approach?
- What would be required for the acceptance and de-stigmatization of traditional coca use and consumption and tolerance of coca as a traditional cultural good?

- And finally, what would be the legal requirements for the protection and respect of indigenous cultural rights in the present context?

My principle research hypothesis is:

1) The inclusion of the coca leaf in the Schedule I List of prohibited substances and the resulting international control and prohibition of it violate the human rights of Indigenous People in the Andean region. The international stigmatization and penalization of the coca leaf and the discrimination against people who traditionally consume it represents a violation of their cultural and identity rights.

2. Methodology

2.1. Methods for Gathering Data

After having decided on the concrete topic of the present work and its research question I conducted a first study of sources at the university libraries in Vienna in order to be able to structure and channel my research. Additionally, I already had accumulated some information throughout my internship at the United Nations Office on Drugs and Crime (UNODC), which was very relevant for a focused approach to a wide set of possible research topics.

Before defining the final topic and title of my thesis, I decided to consult relevant experts from UNODC in order to get suggestions and practical work related ideas. This turned out to be highly useful, because my topic now reflects recent political developments – especially related to the government of (the Plurinational State of) Bolivia – and thus provides actuality while discussing human rights of Indigenous Peoples from an historical approach.

This first brainstorming was followed by an online research, concerning the most relevant institutions or Non-Governmental Organisations (NGOs), as well as other policy making organisations in the field, looking for a counterpart to the official body, UNODC. Two major, internationally working, institutions proved to be of paramount interest for my work: First, the Transnational Institute (TNI) in Amsterdam, whose field of activities inter alia includes the “Drugs and Democracy Programme”. This expertise programme exists since 1996 and analyses trends in the illegal drug economy and global drug policy and causes and effects on

the economy, peace and democracy⁴. And second, the Washington Office on Latin America (WOLA) in Washington, which also has a drug policy programme, monitoring the impact of the U.S. international drug control policy on democracy and human rights in Latin America⁵. Hence I would define my method for gathering data as including two elements: a critical literature research and an experts-oriented research for those fields which required additional and up-to-date practical information.

2.1.1. Critical Literature Research

Literature research for this thesis was conducted on and off over a period of approximately one year, firstly in various institutions and libraries (including their electronic resources) in Vienna, and secondly on the Internet. The latter material predominantly includes up-to-date information derived from online papers dealing with the issue of drugs and democracy, human rights and global drug policy, mainly derived from the websites of international institutions and organisations working in the field. Moreover, it included official international law resources, like Conventions, Declarations etc. and human rights reports and briefings by organisations such as, Human Rights Watch and the International Work Group for Indigenous Affairs. The online literature research also included annual reports, official statements and legal texts from the relevant state ministries or organizations of the respective Andean countries. Additionally to the various university libraries and the national library, the United Nations Office on Drugs and Crime (UNODC) also functioned as one of the key literature providers. Material was obtained from its own library, the public homepage as well as from the Intranet of the office and from various staff members.

Considering the highly differing interests and perspectives involved in an issue like the rights of Indigenous Peoples of the Andean region, linked with an international acknowledgement of coca being a traditional and cultural entity to their communities and this debate in light of the so called “war on drugs”, I have tried to triangulate the material used for my arguments by cross-checking data and findings against information obtained from as many different sources as possible.

⁴ See URL: www.tni.org/drugs

⁵ See URL: <http://www.wola.org>

2.1.2. In depth Expert Interviews

I decided to perform *expert interviews* (see Bortz, Döring et al. 2005: 314) for this thesis in order to get a deeper insight into the topic in areas where the critical literature research was not able to provide full answers and where there was a necessity to explore new or altered dimensions of the topic. Interviews are commonly seen as one of the most recognised forms of qualitative research methods. Especially qualitative interviews should be relatively informal in style and rather resemble a conversation or discussion (see Johnstone 2000: 155). In my case, the purpose of the interviews was receiving qualitative first-hand information to specific research questions which came up during the literature research. This means, I was not interested in gathering statistical data and thus did not develop categories for interpreting the information given by the interviewees. The focus was on establishing a multi-faceted perspective to the given topic, which is also reflected in the choice of people interviewed for the purpose. The spoken language was either English or German, contingent upon the interviewee's linguistic background.

The definitions or tags of the techniques for the expert interviews which were conducted for this thesis vary among the different method textbooks. The technique described in Bryman (see Bryman 2004: 318-344) in what he calls a *semi-structured interview* fits adequately to three of the performed expert interviews. In his understanding, this type of interview covers a list of topics and the researcher, the interviewer, has an interview guide, which, however, can be modified (see Bryman 2004: 320). Thus, in contrast to a rather rigid and inflexible structured interview, the semi-structured interview allows diversions from the key questions, alterations of order or wording of the questions and even the injection of new questions or amendments of already existing ones. Similarly, the interview guide can be expanded with previous interviewees' thoughts as one goes along in the interviewing process. Also, the informants are free to add topics which they consider relevant. Wanted above all are rich and detailed answers, which transport the knowledge of the expert. This is given, inter alia, through the flexibility of the interview system. In other definitions this type of interview is also called not-standardized (qualitative) interview, because only the thematic topic is given as a structure and the rest can be spontaneously adapted to the interview situation (see Bortz, Döring et al. 2005: 236). All interviews were conducted as *individual interviews*, which enabled the interviewer to actively interact with the interviewee in line with his/her field of expertise, communication pattern (type and choice of language) and individual readiness of knowledge provision (see *ibid*: 242). Not only the interaction between interviewer and

interviewee and the asked questions define the outcome of the interview, interview settings can also have an additional relevance to it (see *ibid*: 251). Taking this conviction into account, for all the three expert interviews, which were conducted and planned ahead – that is, in contrast to spontaneous, less structured interviews which rather happened at the state and time of possibility and availability of the interviewee – I decided to realise the interview in a setting which was familiar to the interviewee. The main motivation behind that was to create a personal and for the interviewee comfortable setting, which enabled them to speak freely, first, about their knowledge and experience in the field, and second, about how they see, reflect on and interpret the studied topic. This, in my personal experience and opinion, was especially important in the case of two interviewees, who belong to international institutions working in the field and thus probably, without the given privacy, would have felt more obliged to echo the institution's genuine position in the debate.

All three semi-structured interviews were recorded, after having the interviewee's assent, and transcribed. I chose a way of transcription which is *easy-to-read* (see Johnstone 2000: 118) and does not include interruptions, intonation or other linguistically or socially relevant elements. This decision was primarily made because the main goal was not to evaluate the interviewee's position from a sociological perspective but to capture his professional knowledge. Further more, some passages were left out in the transcription, because they were not deemed relevant for the discourse. Recording the interviews was extremely helpful for me, because, in general, interviews demanded complete attention on my part and with hindsight it would have almost been impossible to recollect the full content of the interviews on the mere basis of taking notes.

Besides the three semi-structured interviews there have been several, what Bryman (see Bryman 2004: 320) terms, *unstructured* interviews. This is a method of interviewing where the interviewer only prepares key-points on what to ask or sometimes only a single question (see *ibid.*). It often takes on the form of a conversation and the style as well as the questioning is informal. In my case, those interviews happened spontaneously, with one exception, and were traced in short notes, followed by a protocol of the talk directly after it. The mentioned exception was an interview, which could also be defined as a conversation on a very personal level, which was one of the most essential contributions outside the literature research. The person in question is of Quechua origin and grew up in the Peruvian Andes. During our long conversation she shared very personal and private stories which enabled me to gather the relevant input for a better understanding of the full and complex picture of the importance and relevance of the coca leaf in Andean traditional society, the meaning of being *indigenous*, the

consequences people have to face in everyday life, the ongoing discrimination which is still prevalent up to the present day and the importance of the fight for the human rights of Indigenous People in all their aspects. Hence, of all people interviewed, my greatest thanks go to this person and her disposition to share her personal impressions, experiences and thoughts with me.

Interesting to experience for me was, that some of the pre-interview formulated questions, which were adapted to the interviewee's background, field of expertise and publication topics, were received less enthusiastically than expected and did not result in exhaustive discussions. This, in my personal belief, proved the fact that the interviews did have a non-replaceable function concerning actuality and "behind-the-scenes" discourse. Like already shortly mentioned, for the complementary qualitative research four experts from different backgrounds have been interviewed, resulting in three semi-structured and one un-structured interview. I decided to travel to Amsterdam for an expert interview with Pien Metaal, who is working with the TNI "Drugs and Democracy Programme" and a well known expert on the coca leaf and related drug policy issues. At the 53rd Session of the Commission on Narcotic Drugs (CND) in Vienna, 8 – 12 March 2010, which I was able to attend for research purposes due to the help of my former supervisor at UNODC, a spontaneous un-structured expert-interview with Coletta A. Youngers, a Senior Associate with WOLA and Project Director of the institution's "Drugs, Democracy and Human Rights" project was conducted. Further more with Thomas Pietschmann, Research Officer in the Statistics and Surveys Section from the Policy Analysis and Research Branch at UNODC, who provided an historical overview on data and figures as well as the most recent tendencies and statistics on coca bush cultivation and harvesting and cocaine and other coca derivatives production. And finally, one expert interview was conducted with Robert Lessmann, who is a journalist and author based in Vienna and has published various books and articles on Bolivia, the coca-cocaine issue and the global drug policy towards the Latin American continent. Additionally, I have been constantly in contact with a staff member⁶ from the Vice Ministry of Social Defence and Controlled Substances in Bolivia, which is responsible for the country's drug policy enforcement. This was especially helpful regarding literature which is not available in our hemisphere, but highly crucial for the topic, as it very much reflects the situation on the field. The scholarly basis for the analysis of my research question is international human rights law

⁶ Lic. Milton Lozano Rocabado, Director General and Chief of the General Coordination Unit

in theory and practice; regional and international drug policy legislation and the history of the present regulation system concerning the coca leaf and its derivatives. That implies international human rights treaties and declarations regarding the rights of Indigenous Peoples, the UN Drug Conventions, selected regional drug policies of the American continent and how they are *de facto* implemented. With regard to the coca leaf, scientific studies are scarce, but those existent will form the basis for a chemist's understanding of its properties, while portrayals and descriptions from the Indigenous People will be the background of its traditional, nutritional and cultural values and properties.

PART I

LA HOJA DE COCA

3. The history of a divine plant and its relevance in Andean indigenous communities

3.1. Botanical definition of coca:

The coca bush is a plant originally from the Andes mountain range. Its scientific name is *Erythroxylum coca* (var *coca*) and *Erythroxylum novogranatense*; it belongs to the family of *Erythroxylaceae*, a very large genus which may contain between 200 and 300 species altogether⁷. There exist many other species of *Erythroxylum*, i.e.; *E. anguifugum* and *E. campestre* in Brasil; *E. tabascense* in Mexico; *E. orinocense* and *E. acutum* (also called “monkey’s coca”) in Colombia and a number of other wild plants (*E. hondense*, *E. cataractarum*, *E. gracilipes* and *E. carthagenense*)⁸.

E. coca and (to a lesser extent) *E. novogranatense* are the two species commonly cultivated, they contain the well known alkaloid *cocaine*⁹. The botanical name *Erythroxylum* or *Erythroxylon* derives from the terms “erythros” = red; and “xylon” = wood, in association to the red outer layer of nearly all plants belonging to its family. The term coca in its Spanish orthography derives from the Aymara word “khoka”, which means tree (see Schweer/ Strasser 1994: 21). It is estimated that the place where coca originated from are the Peruvian Andes, but the exact locality of origin of native coca can not be said for sure. Nowadays though, coca can be found in the whole area of the eastern highlands of the Andes of Ecuador, Peru and (the Plurinational State of) Bolivia (see Martinetz 1994: 100) Also, in the tropics of Colombia

⁷ See inter alia, The Natural Medicines Comprehensive Database, <http://www.naturaldatabase.com.ezp-prod1.hul.harvard.edu/%28S%282s5iiaanghaopg553pj5s345%29%29/nd/Search.aspx?cs=cpce&s=ND&pt=100&id=748&fs=ND&searchid=19932143>, Antonil 1978: 37-40, Ambos 1993: 8 and Hurtado Gumucio 1995, Chapter II.

⁸ See Antonil 1978: 38

⁹ See Antonil 1978: 38. A detailed provision of included alkaloids of, in his context *E. coca*, can be found in Hurtado Gumucio: *Coca leaves may, however, contain 0.25 to 2.25% toxic alkaloids, including benzoylecgonine, benzoyltropine, cinnamyl-cocaine, cocaine, cuscohygrine, dihydroxy tropine, hygrine, hygroline, methyl cocaine, methyl ecgonidine, nicotine, tropa cocaine, and A- and B-truxilline* (1995: Chapter II).

and in some parts of Brazil¹⁰. Coca cultivation requires a uniform and stable temperature of around 18 degrees (64,4 Fahrenheit) and is thus best planted in the highlands, where there is no change in seasons and relative stable weather throughout the year (see Mortimer et al. 2009: 56).

3.2. Genesis of Mama Coca

In this part, the historic as well as mythological roots of coca, the *planta mágica* of the Andes, its relevance to the people and its status in society in the different periods of time will be explored. The periods of time include pre-Inca, during Inca rule, during Spanish occupation and from the time of the discovery of cocaine and onwards. In the mythology and origin part we will see, to what extent *mama coca* plays a key role as an identifying entity in various Andean indigenous communities, a phenomenon which is not less relevant today than it has been hundreds of years ago. The first contact with western society will be observed in the part about coca in the colonial period, which will analyse how the status and patterns of use have been changed in order to meet strategic purposes of the ruling conquistadors.

3.2.1. Mythology and origin:

Mama coca: deity, sanctuary, myth. The spectrum of the mythological narrative of the coca plant as a divine entity in the Andean ideology is wide set and deeply founded in their specific relation to “Mother Earth”, or *pachamama*¹¹. The close relationship between *pachamama* and *mama coca* is of fundamental importance for the understanding of the inherent value of the coca bush for the Indigenous People.

It is assumed that a species of not cultivated, wildy growing, coca existed already in the highlands of the Andes at the time of first human migration to the region from North America 10 000 B.C. Archaeological discoveries suggest that the first indulgence, and therefore also

¹⁰ Details concerning the plantations of coca and their geographic distribution will be treated later in the present paper. In general, the homepage of the United Nations Office on Drugs and Crime (UNODC) – URL: <http://www.unodc.org> - provides the latest data on the field. Nevertheless, it should be noted that figures vary significantly when it comes to coca production and processing; the source and the potential political motivation behind it should be taken into account when dealing with “official” figures and statistics.

¹¹ The Spanish word *pachamama*, a key aspect of Andean mythology which also can be found in Inca mythology, reflects the intense relationship of the Indigenous People in the Andean region with land, soil and nature in general. *Pachamama* means not only mother earth but the totality of nature and represents the female aspect of existence, fertility and the natural cycle of life and death (see Silverblatt 1987: 25 and Lessmann 2001: 25).

cultivation, of coca is dated back to 3000 B.C.¹² and was at that time already quite common (see Antonil 1978: 45). Regarded as one of the most important discoveries which demonstrate pre- Inca coca use are potteries of the Moche civilization. The Moche Empire flourished in northern Peru from about 100 C.E. to 800 C.E. and left a precious amount of pottery art with detailed and realistic life-like depiction. Among these important social activities reported through pottery is a naturalistically displayed coca chewer with a vase. In the Andean highlands the vase was filled with quinoa ashes and at coastal sites with lime produced from shells. Both substances were presumably used for the mixing with coca leaves for chewing¹³ (like it is still the habit today), because in using some alkaline substance, the analgesic effect of the leaf can be obtained. In fact, throughout the Andes, archaeological sites have yielded a great number of some sorts of “containers”, and in the absence of any coca leaves inside them, prehistoric coca chewing is evidenced, as these instruments thus are suggested to have had the function to store and keep the alkaline reagents (see Antonil 1978: 159).

The People of the Andean region have different legends about the origin of the coca plant, which nonetheless show a similar pattern of importance of the coca leaf for their religion and cultural identification. Additionally, most of the coca myths associate coca with female, seductive characteristics.

A Quechua myth describes the birth of the coca plant as follows:

Ihre dunklen Augen schienen stets von geheimnisvoller Trauer umflort, doch keiner ihrer Verehrer mochte das als Warnung nehmen. Coca, das bezaubernde Mädchen vom Lande, betört ein ganzes Reich bis hin zum Inkakönig. Coca sang mit den Vögeln, wenn sie im Morgentau Blumen pflückte und sie sich ins nachtschwarze Haar steckte. Ihre Haut glänzte honigfarben und ein sehnsuchtsvolles Lächeln lag auf ihren Lippen, wenn sie Alpakawolle spann oder Goldfäden in eine Decke für den Inkaprinzen einwob. Abends entschwand sie zwischen den Hügeln, um dort ihre Liebhaber zu treffen... Wen ihr schier unersättlicher Körper besessen hatte, den verachtete sie und trieb ihn so in den Wahnsinn oder zum Selbstmord. Ihr Tun war, so befanden die Yatiris, die höchsten Priester im Inkareich, eine Gefahr für die Ordnung des Reiches. Voller Kummer willigte der Inkakönig ein, daß (sic) Coca verurteilt und hingerichtet werde. Ihr Leib wurde in unzählige Stücke zerteilt und an

¹² The WHO/UNICRI study even talks about first discoveries of the coca bush by the people across the Andes Mountains 7000 years ago (see WHO/UNICRI Study 1995).

¹³ It is important to note in this context, that in fact the leaves are not chewed but sucked (see part on coca chewing). The term chewing is not an appropriated one, but as it is commonly used, this paper will use this term throughout all chapters as well.

allen Enden des Reiches vergraben. Dort überall, wo ein Teil von Coca in der Erde lag, sproß ein Strauch aus der Erde, mit länglichen Blättern, oben dunkel und unten olivgrün leuchtend. Die Indigenas nannten diesen Strauch nach dem Mädchen „Coca“ ... Von jetzt an pflegten sie diese Bäume, pflanzten sie überall an und verehrten sie als Brücke von der tristen Erde zum herrlichen Überirdischen (cited in Misereor 1993: 18).

Analogous, the Aymara myth “Leyenda Callawayá – Leyendas de la Coca” combines the sensual characteristics of a woman with the nurturing characteristics of the coca leaf:

En una de las más hermosas regiones de los Andes existía una extraordinaria mujer, que unía a su magnífica belleza plástica el perverso encanto de su sensualismo y coquetería. Era una diosa que al humanizarse repartía generosamente su gracia y el hechizo de sus caricias. Esta conducta de la pródiga despertó indignados celos de las mujeres, y protestas de moralidad de los ancianos que unidos la persiguieron y le dieron muerte, suplantándola en una tierra fecunda y constantemente humedecida por la lluvia. Las cenizas del cuerpo de esta mujer dieron nacimiento a un pequeño arbusto cuyos hojas tenían maravillosas propiedades. Estas hojas eran fuerza, alivio para el dolor, optimismo de la vida. Y se vengó de las mujeres haciendo que sus novios y sus maridos sufrieran la tentación constante de las hojas maravillosas que adormecían sus deseos de amor (Alurralde Anaya 2002: 12).

One legend recorded near Cuzco in 1571 describes the figure of *mama coca* and her semantic origin in the following terms:

She was a very beautiful woman and because she had an unclean body they killed her and cut her in half and buried her, and from her a bush was born which they called mamacoca and cocamama, and since then they began to eat her, and it was said that they carried her in a pouch, and this could not be opened to eat her except after having copulated with a woman (Cited in: Antonil 1978: 4).

We can see a clear manifestation in all three myths: Coca in association with the female gender, with unclean attributes or promiscuity and some act of sexual indulgence – a feature that reflects coca’s and indeed cocaine’s widespread reputation as an aphrodisiac. Then again, also in association with the nurturing aspect of *pachamama* and the transcendental aspect, in connection to the afterlife.

But not only the Quechua and Aymara myths of the central Andes show these continuous attributions. Miles away, in the Sierra Nevada de Santa Marta (Colombia), the oral traditions of the Cogi Indigenous People seem to show parallel associations of coca with female origins: In Cogi mythology, the coca plant is ultimately a gift of Gualchóvang, the earth mother figure who brought about the primal genesis from out of the still waters. The first coca bush was created by Sintana, the male civilizing hero, in transforming a woman's body, who had been living in attendance of Gualchóvang (see Antonil 1978: 5).

One of the Amazonian cultural mythologies narrates the birth not only of coca, but also of the hallucinogen *yajé*: the daughter of a mythical figure called Wai-Maxse, "Lord of the Beasts", went down to the beach on a river bank, because she was in intense menstruation pains, and lay rolling over in the sand. An old Desana woman from the Tukanoan group in the Colombian Vaupés region tried to help her to her feet, but the girl was moving in such a violent spasm that one of her fingers came away in the hand of the Desana woman. The same story is repeated for another of Wai-Maxse's daughters, and, planted into the ground; the two fingers produced *yajé* and coca respectively (see *ibid*: 6).

These narratives coming from different cultural backgrounds show the deeply routed connection of coca with the female aspect of existence. In literature, coca is often associated with the star Spica, which is attributed to the astrological sign of the virgin, so again, an attribution to female elements and the (sexual) reproductive process.

Hence, numerous sources reflect the metaphor of coca as "mother". Another coca legend can be found in the genesis of the Inca dynasty. The son of the sun-god, Manco Cápac, descended from the shore of the Lake Titicaca and brought the light, the knowledge of the gods and arts and the coca plant to humankind. The last one was presented as a divine plant which satisfies the hungry, strengthens the tired and blesses the unhappy (see Springer 1989: 15 *f.* and Ambos 1993: 9).

One historical tradition from the Aymara people gives insight to the possible geographical origin of the coca plant and is therefore seen as highly realistic. It is also one which does not combine the evolution of coca with a divine or female phenomenon, but rather states it as a discovery of our nature's plenty. According to this tradition, farmers went down to a tropical forest to lay out fields after a land-clearance. The god of thunderstorms, Khuno, sent heavy rain showers, as he was furious because of the smoke which emerged due to the land-clearance. Thus, the farmers had no means to get back and being extremely hungry and thirsty, started to eat leaves – from the coca bush. As the hunger vanished and they regained

strength they were able to start the journey back to the Altiplano and immediately reported about the newly discovered *planta mágica* (see Dietz 1990: 41 f.). One can observe, that the legend of a divine plant, coca, is deeply rooted in Andean history. Be it the Quechua, Aymara, Cogi or other Indigenous People, they all present coca as a core element in their historic tradition. Concerning the patterns of coca use during the Inca empire sources tend to describe a varying picture: it is often mentioned as the divine plant of the Incas, where coca use was limited to the ruling social elite and restricted to special religious festivities and events (see Martinetz 1994: 100). The “lesser” citizens were, according to this view of history, excluded from the enjoyment of this aristocratic privilege. Antonil argues, that one should bear in mind, that this belief holds a certain appeal to critics of the coca habit, but doubts its actual credibility (see Antonil 1978: 51). Accordingly, other sources argue, that the ruling social classes only were in charge of distribution and in power of disposal of coca, but did hand it down to the lower classes. This view is substantiated by the numerous reports of coca chewing “Indios” (see Ambos 1993: 10). Non-monopolistic tendencies in the organization of the coca trade itself during the Inca period, and later on right through into Spanish colony, also support the second view (see Antonil 1978: 51). Regardless of the scholarly uncertainty of the dimension of coca consumption during the Inca period, what we can state for certain is that, the coca leaf was conceived as a delicacy, used as an offering and remedy. In addition, during the Inca epoch it had a monetary function, forming part of the tribute payment structure (see Boville Luca de Tena 2004: 37).

3.2.2. Coca in the Colonial Period

The Bolivian author and scholar Antonio Díaz Villamil conveys a legend which has a striking relevance to the history of the coca plant and is often received as a sort of prophecy in Andean history. It discusses the meaning of coca under Spanish (western) domination for the Indigenous People. In the narrative, the old and wise man Kjana-Chuma, who was at service at a temple on the sun island, managed to flee before the arrival of Spanish forces and secured immeasurable treasures from the Inca temple. Nevertheless, when the *colonizadores* did capture him, aware of the fact that he hid the treasures, they tortured him, without success, because Kjana-Chuma refused to say a word. They then abandoned him. In his agony, he dreamed about the Sun-God Inti, who told him about the divine plant and how to use it. Kjana-Chuma was told to spread the following words to his fellows:

Kjana-Chuyma, sintiendo que le quedaban pocos instantes de vida, reunió a sus compatriotas y les dijo: Hijos míos. Voy a morir, pero antes quiero anunciaros lo que el Sol, nuestro dios, ha querido en su bondad concederos por intermedio mío. Subid al cerro próximo.

Encontrareis unas plantitas de hojas ovaladas. Cuidadlas, cultivadlas con esmero. Con ellas tendréis alimento y consuelo. En las duras fatigas que os imponga el despotismo de vuestros amos, masticad esas hojas y tendréis nuevas fuerzas para el trabajo. En los desamparados e interminables viajes a que obligue el blanco, masticad esas hojas y el camino os [sic] hará breve y pasajero.

En el fondo de las minas donde os entierren la inhumana ambición de los que vienen a robar el tesoro de nuestras montañas, cuando os halléis bajo la amenaza de las rocas prontas a desplomarse sobre vosotros, el jugo de esas hojas os ayudará a soportar esa vida de oscuridad y de terror. En los momentos en que vuestro espíritu melancólico quiera fingir un poco de alegría, esas hojas adormecerán vuestra pena y os darán la ilusión de creerlos felices. Cuando queráis escudriñar algo de vuestro destino, un puñado de hojas lanzado al viento os dirá el secreto que anheláis conocer.

Y cuando el blanco quiera hacer lo mismo y se atreva a utilizar como vosotros esas hojas, le sucederá todo lo contrario. Su jugo, que para vosotros será la fuerza de la vida, para vuestros amos será vicio repugnante y degenerador: mientras que para vosotros los indios será un alimento casi espiritual, a ellos les causará la idiotez y la locura (Díaz Villamil 2006, emphasis by the author).

Reciprocally, in a letter in 1504, Amerigo Vesputio described his perception on the Indigenous People he encountered at a journey to the north coast of South America and their traditional use of coca, from the side of a Spanish conquistador:

They were very ugly in manner and appearance; all had their cheeks bulging with a certain green herb which they chewed constantly, like cattle. They could hardly speak, and each carried two gourds hanging from his neck, one filled with herb he had in his mouth, and the other with a white flour that looked like powdered plaster. From time to time they would wet a stick dip it in the flour and then put it in their mouths... mixing the flower of the herb... and, amazed at such a thing, we could not understand its secret (Cited in: Antonil 1978: 12).

Scholars state that it seems likely that Vesputio's letter is the first written report on coca use, demonstrating that it was obviously a wide spread phenomenon in the 16th century.

But Vespuccio was not the only one with a critical view on coca. Pedro Cieza de León relates, that, although it seems beneficial in terms of easing hunger and giving strength, coca chewing is an allegedly bad and sinful habit, only appropriate for people *like these Indios*¹⁴ (see Schweer/ Strasser 1994: 24 *f.*).

Between 1551 and 1569 coca was ostracized by the Spanish crown as well as the Catholic Church; the Spanish king warned his subjects from making use of the satanic product. But the first doubts on coca were rapidly reassessed when the crown realized its economic potential. The *conquistadores* saw the positive and strengthening effect the traditional coca use consumption had on the Indigenous People and observed their additional work output and potential in the crown's gold and silver mines when chewing coca (see *ibid*: 25) Thus Philipp II of Spain declared coca *as essential for the wellbeing of the Indios* (see Kappeler 1991: 113). But not only did they discover the inherent work potential of the coca chewing habit, the Spanish conquistadors also saw the economic potential of the coca plant itself and started to cultivate it in monopolistic structures.

Hence, the beginning for an industrialization of coca was set (see Schweer/ Strasser 1994: 26). Consequently, the Indigenous People themselves were not allowed to cultivate their traditional plant anymore and the plantations owned by them were taken over by the crown and distributed under the system of the *encomienda*¹⁵ to the leading citizen of the Spanish colony. The Indigenous People were then forced to work for the new powerful land owners (see Antonil 1978: 56). In parallel to the Spanish crown, the Catholic Church, which before condemned coca as a worthless thing with the only purpose to underline the superstition of the "Indios", started to see the wealth underlying the coca market and trade. The given reasoning of the Church for its change in mind was that God would not have created coca in these lands, if it would not be necessary for the people inhabiting it, because nothing is created without reason. In more practical terms, this meant ten percent of the annual income from the coca economy – quite a boost for the Church's budget (see Schweer/ Strasser 1994: 27). A report from 1568 informs that the coca cultivation has increased significantly during the, at that time, 33 years of Spanish colonial rule. Especially in Potosí, where the silver mining economy flourished, coca was a high demanded good and fetched twice as high a price than in Cuzco.

¹⁴ Emphasis by the author.

¹⁵ The *encomienda* is a labor system established by the Spanish crown. The Encyclopædia Britannica defines it as follows: "Although the original intent of the *encomienda* was to reduce the abuses of forced labour (*repartimiento*) employed shortly after the discovery of the New World, in practice it became a form of enslavement... was designed to meet the needs of the colonies' early mining economy. With the catastrophic decline in the Indian population and the replacement of mining activities by agriculture, the system lost its effectiveness and was gradually replaced by the *hacienda* system of landed estates" (see Encyclopædia Britannica 2010).

The author Eduardo Galeano called the system of forced labour of Indigenous People in the mining sector a “machine for the destruction of the Indians” (cited in Lessmann 2001: 27). For the new extensive sector of the mining industry higher demands of coca cultivation and trade were essential. Thus, long-range coca trading became common among the colonial masters; the involved profit of such a trade was up to 34 kilos of gold, a quantity which in the 1560s would have enabled a single person to retire comfortably for the rest of his life. This picture clearly demonstrates that the get-rich-in-a-short-period phenomenon, through cocaine trafficking, of our days is not as new as we might think it would be, but has always been an intimate part of white man policies in America (see Antonil 1978: 57). In the course of time, the perception on coca use (especially coca chewing) started to change: what was before regarded as a habit of primitive Indigenous People more and more gained popularity also among the white population.

Summarizing the changes and formation of the status of *mama coca* in the colonial period and the impacts on the further developments in the history of the plant, it is necessary to state that the uprooting of the coca plant from its traditional indigenous use and value has caused tremendous effects on the Andean society as a whole. The characteristic turning point in the social history of a narcotic drug generally occurs when at the end of an epoch the traditional integration of the respective drug into its specific culture gets destroyed or becomes decomposed (see Schweer/ Strasser 1994: 23). In other words, coca use changed from being an endemic drug use to an epidemic one¹⁶. The history of *mama coca* can be seen as a perfect example for this assumption: Initially, coca, in its natural form, was appreciated as a traditional cultural and religious core element, on the basis of reciprocity and Andean cosmology. People alien to this traditional setting started then to industrialize and “misuse” natural coca for economic, capitalist purpose.

In the 19th century, with the discovery of cocaine as an extractable derivate of the plant, the career of coca took another tragic turn. This happened under a broadened spectrum: the plant finally fully entered the international field.

¹⁶ Endemic drug use, according to Schmerl, means common and accepted drug use among the adults of a given society. They know about and are able to control the consumption techniques and use patterns and thus do not have negative health effects or risk the social wellbeing of the community. Epidemic drug use means the occurrence of use pattern of a new drug, without the existence of the required knowledge about safe and harmless consumption (i.e. doses, application etc.) (see Schweer/ Strasser 1994: 39f.).

3.2.3. The discovery of Cocaine – A brief historiography

We must understand the coca leaf and its main alkaloid to understand the crusade in its full dimensions. The original plant has been fully integrated into the Andean culture for millennia, yet in a brief century and a half of cocaine use, its reputation has gone from a panacea to something that is “evil”. In its demise, cocaine has irrevocably dragged the coca leaf down with it (Boville Luca de Tena 2004: 33).

The very first purely botanical classifications of coca are reported to have been made in 1692, by Plukenet (see Mortimer et al. 2009: 54). The first coca leaves came to Europe in approximately 1750, for scientific purpose. The French scholar Joseph de Jussieu intended to study their botanic substance but did not manage to do so, because the ingredients got rotten due to the long transport to Europe (see Geschwinde 1990: 223). One of the earliest important field reports on coca came from the Swiss Johann J. von Tschudi. In his travel documentary from his stay in Peru from 1838 until 1842 he wrote inter alia 16 pages about the coca plant itself. He included detailed description of the bush itself, ideal climate conditions for cultivation, special procedures for coca harvesting and conservation and the structure of Peruvian coca markets. In his own judgement, the habit of coca chewing appeared not to have any negative effects on the people, rather the contrary – he reported cases of very old Indigenous People of up to 130 years, who performed coca chewing on a very regular basis (see *ibid*: 39). *Mama coca* was in his opinion highly beneficial for the population of the Andean region and he underlined that coca chewing is as little a vice as is the consumption of wine. What is crucial, in his opinion, is the quantity of consumption (see Schweer/ Strasser 1994: 37). Tschudi’s friend, Paolo Mantegazza, doctor, anthropologist and author conducted a self-study research on coca in quite an excessive and multifaceted form. He articulated his findings about the plant even more euphoric:

... God is unfair. He designed life in a way that humankind can live without constantly chewing coca. I prefer a life with coca to living millions of centuries without coca¹⁷
(See cited in Schweer/ Strasser 1994: 39).

But the Europeans were in fact still condemned to live without coca. In contrast to coffee, tee, tobacco etc., the coca plant was not destined to be cultivated on European grounds, not even under professional botanical supervision. Nevertheless, the increasing reporting on the coca

¹⁷ Translation into English by the author.

plant nourished the interest of European scientists and scholars in further investigating the properties of a, to them, exotic and nearly unknown natural plant. This research interest led to higher amounts of coca imported to Europe. In 1860 the chemist Albert Niemann managed to isolate the main alkaloid of the plant and titled it **cocaine** (see Mortimer et al. 2009: 179). Shortly after that, when entering the pharmaceutical market, the substance came to a new level of popularity. The dramatic mid 1880s discovery of cocaine's anaesthetic properties led to a wave of writings and scientific studies on the medicinal potential of the substance (see Gootenberg 1999: 2). The dominant agents in this field have been German-speaking Karl Köller, E. Merck and famous Sigmund Freud¹⁸; the French Angelo Mariani, whose name is mainly known because of the 1863 invented coca laced tonic "Vin Mariani"¹⁹; as well as distinguished physicians like Dr. Robert Christison, pharmacist William Martindale and botanist Richard Spruce (see *ibid.*). Studies from other parts of the world, be it Japan, Peru or the Netherlands, followed. However, probably the most extensive literature on coca and cocaine can be found in North America at that time. The ethno-botanic work from H.H. Rusby, an innovative pharmaceutical study by Parke Davis's Edward Squibb and *the* book of coca by William Golden Mortimer - *History of Coca: "The Divine Plant" of the Incas*, a classic in the herbalist defence of the plant - are among the major contributions of that sort. Cocaine also started to influence literature cycles by the time of the late 19th century. Robert Louis Stevenson is said to have been influenced by cocaine in writing his novel *Dr. Jekyll and Mr. Hyde*. Also, Conan Doyle strengthened the already sharp minded criminological skills of his protagonist *Sherlock Holmes* with cocaine (see Schweer/ Strasser 1994: 103).

Excuse: From Coca to Cocaine

In order to further clarify the distinction between the coca leaf in its natural form and its derivate cocaine (crack cocaine or cocaine HCL) it is of fundamental interest to also study the distinct steps in the process of transformation and manufacture. Processing of coca leaves and

¹⁸ Who, as an important side comment, failed gloriously in promoting cocaine as the new wonder product for medicinal purposes (i.e. treating his morphine addicted friend Dr. Fleischl) (see Freud 1884: 311). The only contribution cocaine was able to make on a long term basis was in his use as a local anaesthetic for eye operations. Nowadays, even this form of medical cocaine use has been replaced by synthetically produced substitutes, due to the important fact that cocaine was not able to stop the bleeding during the operations (see Gootenberg 1999: 3 and Interview Metaal 3.2.2010).

¹⁹ Angelo Mariani, a French apothecary, is sometimes called the father of the industrialization of coca, next to William Golden Mortimer, for his creation of "Vin Mariani", or coca wine. The product was highly appreciated among personalities of politics, literature – i.e. U.S. William McKinley, Emile Zola and Jules Verne – but also by Thomas Edison and Popes Pius X and Leo XII (see Levinthal 2008: 87 f.).

quantity requirements will thus be studied in this short excursion. For the analysis I use information from Painter, Dietrich and Ambos.

- (1) *Drying*: There are two ways of drying the harvested coca leaves: they can be dried on solid ground (soil) in the surroundings of the agrarian plantations or farms, where it is important to allocate them broadly, in order to secure a conform drying of all leaves. Under frequent stirring, the leaves are in the proceeding dried by the sunlight (termed *coca del dia*). Another possible way is through fermentation, which requires a regular moistening of the leaves and, with the help of blankets, dry-stomping by foot (termed *coca picada*²⁰).
- (2) *Extraction*: For the extraction of the alkaloid cocaine, the dried coca leaves have to be mixed with water (H₂O) and sulphuric acid (H₂SO₄) and soaked in the mixture (called *limonada*) for about 12 to 24²¹ hours, during which, usually, the so called *pisacocas* (coca stompers) stomp the paste-like compound in large plastic vats. Additionally an alkaline solution of kerosene, calcium carbonate (lime), sodium carbonate, potash or other similar precursor chemicals is added, which begins to break down the fourteen alkaloids contained in the leaf. In this process a yellowish or whitish compound is generated on the surface²² which is the well known so called row coca paste – also named in Spanish terms *coca pasta*, *pasta básica de cocaine* or *PBC*, *coca bruja*, *pasta básica bruta*, *sulfato* or *pasta base*. This second stage process is rather easy to perform and is thus often accomplished in the so called *cocinas*, small primitive laboratories, close to the coca plantations.
- (3) *Purification*: The substance is then washed again, which equals a process of refinement, with the help of kerosene, ether, acetone, ammonium hydroxide, and potassium permanganate (or similar) in order to get a purer form of the alkaloid cocaine. The result is known as cocaine base (*base*, *pasta básica lavada* or *PBL*, *sulfato básico* – C₁₇H₂₁NO₄). If further filtered, a grade of alkaloid purity of 70 to 85 percent can be obtained.
- (4) *Further purification*: In the final stage, the *pasta básica lavada* is dissolved in ether or acetone and hydrochloric acid is added. The mixture has to be dried and filtered again to get the resulting substance cocaine hydrochloride (HCL), in Spanish terms,

²⁰ *Picar* in Spanish means to punch, to bounce, associated to the activity.

²¹ Information on the duration of the coca stomping varies according to different sources. Dietrich for example speaks of 4 hours coca stomping (see Dietrich 1998: 35).

²² Again, information differs in that sense as well, as for example painter creates an opposite picture and states that the substance of *pasta base* is left at the bottom of the vats (see Painter 1994: 23).

clorhidrato de cocaína. The final product has a grade of alkaloid purity of 95 to 99 percent.

(see Ambos 1993: 14f.; Dietrich 1998: 34-36 and Painter 1994: 23).

The U.S State Department made an assumption in 1991 concerning the quantity of the in- and output of the process: according to their findings, between 75 and 110 kilograms (kg) of coca leaves yielded one kilo of coca paste. Two to four kilos of coca paste yielded one kilo of base, which yielded the same amount of cocaine HCL (see Painter 1994: 23).

Ambos describes a similar quantity output relationship, but with specific structuring according to regions: In Peru, figures from the region of Alto Huallaga show that one kilogram of coca leaves produces one kg of row coca paste, 0,45 kg of coca base and 0.33 kg of cocaine hydrochloride. In Bolivia, 96 kg of Yungas coca leaves had an output of one kg of coca paste. From 2,02 kg of coca paste, one kg of base was to be obtained and 1,25 kg of base produced one kg of cocaine hydrochloride (see Ambos 1993: 15f.). Dietrich presents the scenario in more general terms: 1000 kg of coca paste (PBC) have an output of 410 kg of coca base (PBL) (see Dietrich 1998: 36).

Given the fact that the figures I was able to obtain are not from recent data, it should be kept in mind that statistics in this matter could have changed drastically. In my interview with Thomas Pietschmann, I was informed that the mechanisms and techniques of processing have been improved and professionalized. That means, the yield of harvested coca leaves grew and the possible output increased.

Regardless of specific quantities or exact figures, for the purpose of the present work, the main focus is to underline that, as it can be observed above, there exist a number of chemicals and solvents which are paramount for the processing of coca leaves to cocaine HCL and crack cocaine²³. Many of these chemicals are quite common and all of them have genuine legitimate uses, which is problematic as it makes them difficult to control. These are to a great extent imported in big amounts from western industrialized countries (i.e. Germany)²⁴ and this condition enforces once again the interdependency of the globalized drug trade and market.

²³ Crack cocaine is a side product of the process and actually chemically polluted (see Ambos 1993: 17), but way cheaper (it is consumed mixed with tobacco or marihuana), and way more aggressive and dangerous in terms of addiction than cocaine HCL (Interview with Thomas Pietschmann).

²⁴ See for instance, U.S. Department of State, March 2005.

The era from the 1920s until the 1960s, after the starting point of cocaine prohibitions – first in the United States and then followed elsewhere – left a deep gap in knowledge about cocaine and even about its potential harms and dangers. The substance, now criminalized and thus driven to the underground, has in fact been far behind in matters of research and study until the 1970s in comparison to scientific knowledge of other comparable drugs. Additionally, especially in the US – the prominent player in the drug policy field at that time and in fact up until now -, cocaine lost parts of its historical and juridical distinctiveness, was summed up with other “narcotics” and treated as a “throwaway concern”, archived in files along the way (see Gootenberg 1999: 3). Although the Single Convention on Narcotic Drugs came into force already in 1964, nobody in the international field seemed to regard the cocaine issue as a high-on-the-agenda one. Things ran smoothly and no drama was made. That changed radically when the US started to have heavy problems with crack cocaine at the beginning of the 1980s, starting from the west coast of the United States. At that time, the U.S. public got more and more concerned with street gangs consuming the substance, which is by far more dangerous than cocaine HCl and foments aggressive, violent behaviour (see Schweer/ Strasser 1994: 114). Due to the pressure for action by the U.S. public, the government was forced to act accordingly, and the existence of the 1961 Convention came back into focus (Interview Lessmann 11.2.2010). In the following, without an accurate or immediate change in the International Law concerning coca, the policies and actions based on that International Law changed drastically.

3.3. Forms of Traditional Coca Use

*Coca will always be present in all important moments of their life because it is not only a product, but heritage as well. It is not only their most important element of their survival, but it also represents what is sacred to them, their culture, traditions and their endurance against abuse and exploitation*²⁵.

Coca is not cocaine. The Indigenous People of the Andean Region know that for certain since over 3000 years. Regardless of that fact, undifferentiated equation by political representatives or the general public has happened and still does so in many cases. *Campesinos* and *cocaleros*, coca farmers, are equated with cocaine traffickers and smugglers; the traditional indigenous commodity *mama coca* is often regarded as dangerous as its derivatives, crack

²⁵ See Hurtado Gumucio 1995: History of the Coca Plant.

cocaine and cocaine HCl. The coca leaf has been used and misused for many ends, all of them suiting different interests, agendas and political backgrounds.

It is of paramount importance for this paper to clear the often blurrily created distinction between a traditional entity with major importance to indigenous culture and tradition and a narcotic, which has been given birth to by the western world, has been utilized by the western world and has been of use to the western world and its particular needs. It should be scrutinized, to what extent it is legitimate to globally stigmatize a natural plant, with the only obvious reason to do so being an increased tendency in the western hemisphere (and lately to a lesser extent also in the often so called “in development countries” which have been affected by the powers of cocaine in their function as trafficking routes²⁶) towards drug addiction and dependency. For a thorough distinction of the coca leaf/ plant from its derivatives and an analysis of its relevance and rootedness in native culture and tradition, it is necessary to study the traditional patterns of coca use in Andean indigenous societies in the following chapters.

In general, it should be underlined that the native population (the Indigenous People) of the Central Andes can report a long history of religious and cultural heritage. Mariscotti calls this a “common cultural heritage” which goes back way into pre-colonial times and prevails until today, even if slightly hybridized or changed. What is common to the different Indigenous People or communities is the worship of *pachamama* as part of their religion and the ritual sacrificial offerings to *pachamama* and other natural religious entities²⁷ (see Rösing 1988: 662 *ff.*).

One of the key elements in the Andean worldview, which is for this purpose extremely relevant, is the principle of reciprocity. It defines all types of social relations and is based on a principle of interrelation and interdependency, which thus suggests a form of mutual support and consideration of all parts of society. Social norms, cultural tradition and religious, mythic beliefs form one entity in Andean cosmology. The underlying view is an holistic one, which sees the human beings as parts of space (nature), time (history and tradition) and of their current society (present social setting). In this context, coca has a binding function as it represents a mean of communication, among the respective elements as well as between them.

²⁶ For example, countries of West Africa, the Caribbean Islands, Central America etc. have heavily been affected by the cocaine market, because they are to be found on the major trafficking routes. For a more detailed analysis of the routes and ways cocaine is trafficked see in general the UNODC annual reports and specific report and the chapter in the present work on recent tendencies in the cocaine market.

²⁷ With natural religious entities I mean different Gods, like i.e. the sun god Inti in Inca culture (see also above in chapter Coca mythology).

Hence, on the one hand it incorporates the principle of reciprocity itself and is on the other hand a mean for interaction, which initiates different dynamic relationships. The forms and regulations of coca use empower the indigenous and *campesino* people to perform integration on various levels of their social contexts (see Dietz 1990: 35f.). The sacred plant facilitates the approach of the people living in the Andean region with their living deities (*achachilas*) and mountain deities (*apus*), an important custom for keeping in contact with their ancestors (see Lessmann 2009: 5).

Jorge Hurtado Gumucio explains the phenomenon in his book, *Cocaine the Legend*, in the following wording:

*Coca plays a key role in reciprocating manners. In the Andean culture all social interaction is conceived in terms of reciprocation or interchange. There is no reciprocal interchange in which coca is not offered.*²⁸

The principle of reciprocity is not only present in everyday-life and in the relationships and approaches of the Indigenous People with transpersonal powers and spirits (gods); it also influences economic relationships and structures. Another key word in this aspect is redistribution. Work mechanisms form part of a “network of reciprocity”, which in the Andes is structured according to the different thermal stages of the region and denominated as the phenomenon of “vertical complementarity”²⁹. As a general rule it can be said, that the traditional indigenous economy is not comparable to a capitalist (western) economic structure, but is based on reciprocity and redistribution which are to a certain extent ritualized in the particular Andean worldview and enshrined in the social organisation of the communities (see Perafán 1999: 3). It will be important to bear this principle in mind when discussing the global penalization of the coca leaf, its impact on Indigenous People in International Law and on their everyday life in later chapters.

Below, the different traditional forms of coca use will be explained, in order to show and explicitly discuss the complexity of traditional patterns of use and the inherent values they represent for Andean Indigenous People.

²⁸ See Hurtado Gumucio 1995: Chapter I.

²⁹ Even at present this phenomenon can be observed when looking at photographs of plantation areas or satellite images, on which it is clearly possible to distinguish areas occupied by Indigenous People from others. The first show a specific uniformity and particularity of land acquisition (see Perafán 1999: 3, Footnote).

3.3.1. Social aspects of coca

The social aspects are tightly intertwined with the overarching principle of reciprocity, explained above. Coca is used in different social settings and behavioural codes in everyday-life. If, for example, a man asks a woman for *ayni*, an Aymara principle of mutual support in family settings, she will offer a handful of coca leaves³⁰. But coca is not only offered to ask for assistance, it is often used as a mean for creating a familiar and comfortable social setting, inter alia, with the purpose of overcoming uneasy situations. Therefore, coca can be an important part in social conflict resolution (see Dietz 1990: 27). *Chuspas* (coca leaf pouches) are commonly seen as a symbol for authority and carrying a big amount of leaves in your *chuspa* is considered typical for people with a high social status in the community. At assemblies, social gatherings or when hosting guests, offering plenty of leaves is part of the social code; it shows the person's knowledge of good manners (see Andritzky 1999: 49 and Dietz 1990: 27). Coca consumption is further more closely linked to the different phases of life of a person: in Andean cosmology the cycles of life are associated with certain responsibilities in society. Coca consumption starts to be a basic element in life beginning with adolescence, which commence for men and women at different ages - i.e.: women do in general terms not consume coca prior to their marriage, for men the starting point of coca consumption is rather associated with taking on responsibility of their social duties (see Dietz 1990: 29).

Additionally, the coca leaves have ritual meaning in two substantial social events: marriage and death/funerals.

*The petition of a woman in marriage is led by the relatives of the groom by offering a handful of coca. The success of the petition would be indicated by the acceptance or rejection of the gift.*³¹

During death watch and ritual washing ceremonies coca is of fundamental importance, because the leaves show respect and sympathy to the deities. All attendees have to chew and some leaves have to be put onto the floor, because the belief is that after the third day of death watch the deities collect the remaining leaves on the floor and burn them. The soul of the dead person then ascends to heaven together with the sacred fume (see Salas 2002: 50 f.).

³⁰ See Hurtado Gumucio 1995: History of the Coca Plant.

³¹ See Hurtado Gumucio 1995: Chapter I.

Coca offerings and rituals also play a fundamental role at times of field cultivation and harvest. The close relationship of the Indigenous People to *pachamama* and the belief of their dependency on her benevolence can be seen as a reason for a, up until today, continuing of this agrarian ritual, which is destined to Mother Earth and the guardian spirits (see Rätsch, Ott 2003: 35f.). Also, the coca plantations are a symbol of community life and reciprocity in the Andean social structure:

*In the Yungas region, the men do sowing, while the women harvest the fields. The fieldwork is a communal function, shared equally among all members of the community, as one family plot is harvest (sic) by all community members at a time. This forms part of the reciprocity (ayni) that is part of the Andean culture.*³²

Especially the Inca period established a set of ceremonies and rituals, according to their calendar, in which coca played a fundamental role in its religious-magical aspect. These practices do to a certain degree still persist today in quotidian Andean traditional life. Among those monthly ceremonies are *Aimoray*, in May³³ (month of the harvest), *Aucaí Cusqui*, in June (rest of the harvest) and *Capac Inti Raymi*, in December (month of the festivities for the Sun-god) for which coca is an important element in the offerings to the deities and to nature³⁴.

It can be seen, that coca cultivation does not only correspond to a way of earning one's living for the *cocaleros*, but also to a form of preservation of the specific rituals, norms and cultural festivities of the Indigenous People in a, nowadays, rather modern setting. The incorporation of the divine plant, the sacred plant, is part of a strengthening of the cultural identity of the native people living in the Andean region. Some scholars argue, that the traditional consumption of coca in forms of tea or coca chewing is the intrinsic element of the mutuality in Andean culture (see Ambos 1993: 13), comparable to the role of tea, coffee or even alcohol in western cultures.

³² See Hurtado Gumucio/ Sdenká: The Coca Museum: 57, 61.

³³ During this month, food was plenty and the deposits were filled again and food allocation structured for the rest of the year, so that people would not have to starve. Coca-leaf chewing is/was an integral part of the festivities during the harvest (see Vacchelli Sichei).

³⁴ See *ibid.*

3.3.2. Coca chewing

The practice of coca chewing is probably the most well known form of traditional coca use in non-indigenous Andean societies. Over the time it has been associated with a certain mystic character and in the chapter about coca in the colonial period it can be seen that it has since time been the only traditional use foreigners were either fascinated or adverse to. Either way it has always been present in the discourse about the Indigenous People of the Andes. Especially in matters relating to work and physical endeavour coca chewing has always been an integral part and still represents a key element in that sense until today, for all parts in the Indigenous communities – workers, landowners, elders etc.³⁵

Recently, the topic was high on the agenda when the president of (the Plurinational State of) Bolivia, Evo Morales Ayma, openly chewed coca at the 2008 Commission on Narcotic Drugs in Vienna and thus provoked a little bit of uneasiness among some other delegates. In order to have a better insight into this much debated traditional practice, it is necessary to discuss it in detail, in the difficult attempt to embrace its complexity.

Although the practice is generally called “chewing”, this is in fact not the right word for the process of consumption. It would probably be more accurate to call it coca sucking, but as coca chewing is an established definition commonly used, I will continue to do so in this paper. In the indigenous vocabulary the practice is called *acullicar*, *chacchar*, *picchar* or *coquear* (see Cabieses Molina 1992: 9 and Alurralde Anaya 2002: 123)³⁶. The Quechua and Aymara people represent the biggest group of Indigenous People regularly performing coca chewing. A total of all coca chewing Indigenous People in the Andes can only be estimated and a specific figure is hard to obtain, because, first of all, it is not certain to what extent the younger generation of Indigenous People or those living in urban areas perform the traditional habit, and second, some non Indigenous People also practice coca chewing³⁷. Rough estimates are between 8 and 15 Million indigenous individuals (see Mittermeyer 1998: 57)³⁸.

³⁵ See Hurtado Gumucio 1995: Chapter I.

³⁶ The spelling of the wording varies sometimes according to different sources. Further more, there exist additional terms for the practice, regionally used. Perafán for example cites the practice as *mambeo*, because he studied traditional use of the Paez Indigenous People in Colombia, and the term is specific for the country (see Perafán 1999: 18). In the Paez’ own language the *mambeo* is called *kuétan tuka*, while the gourd in which the lime, or other alkaline reagent is carried is called *kuétan yáha* (see Antonil 1978: 159f). For a detailed semantic analysis see Alurralde Anaya’s book *Coca Acullico y sus Beneficios* 2002.

³⁷ Information obtained from Javier Montaña at UNODC Vienna.

³⁸ Obviously, it should be taken into account that these dates are not up to date anymore, they certainly still represent a rough estimate.

The very picking of the leaves for chewing (or in that sense, all other types of traditional coca use) is for itself already a reflection of worship towards the plant. If done rashly or inconsiderate the extremities of the branch can be damaged and this is considered as a bad sign out of laziness or bad technique (see Antonil 1978: 152). Appropriate handling requires time, patience and the repetition of the same movements – one might say, in condign tribute to *pachamama*.

Traditional coca chewing involves various important considerations, when done adequately. The first step is to choose the best coca leaves available, without pollution, spots or ruptures. Quality is of high importance in that matter. Antonil, for example, notes in his famous book “Mama Coca” that sniffing the aroma of the coca leaves is a common practice, because a good smell is a great indicator for the freshness of the leaves (see Antonil 1978: 132). The chosen leaves for coca chewing are called *K'intus*. Then, cautiously the leaves are getting prepared, formed into a bolus³⁹ and before putting them into the mouth a practice called *pukuy* has to be performed. This involves invocation and oration, which in a way corresponds to blessing the leaves themselves in obeisance to *pachamama*, specific local and regional sites and the mountain deities who surround the *acullicador* (see Cabieses Molina 1992: 9). The selected and “blessed” leaves are taken into the mouth and chewed only for a short moment before being formed into the bolus (*acullico* or *jacho*⁴⁰), which then has to be mixed with an alkaline substance (carbonate), which facilitates through stimulating the saliva the extraction of the refreshing and strengthening ingredients of the coca leaves. In the following, the created bolus, also called *picchu*, is kept between teeth and cheeks for a period of about one to two hours during which the chewer absorbs the greenish alkaloid in extracting the juices of the bolus (see Schmidbauer/ v.Scheidt 1989: 188, 200). The duration of chewing is important, because the process of the penetration of the alkaloid into the mucous membrane is a slow one and therefore the leaves have to be sucked gently for a certain time before showing the intended effect (see Antonil 1978: 122). The alkaline substance, known as *llipta* or *torca*, can vary in the different regions. In some areas, natural lime is mixed with sea shell powder, in others the *acullicadores* use plant ashes, sometimes pulverized or also mixed with lime or other substances with a similar effect. These devices are always part of the coca chewer’s facilities and carried in what is called a *calero*, or *poporo* (*yubúru*), whereby the bag in which the coca leaves are carried is called *chuspa* or *huaqui* (see Cabieses Molina 1992: 10). The practice of chewing, which in some regions is also termed *hallpay*, has a very ritual quality

³⁹ Of about 8-10 grams; sources vary on that, which is probably due to specific personal preferences of the consumers.

⁴⁰ The second term can be, inter alia, found in Cabieses Molina 1992: 123.

for the Indigenous People of the Andes. *Hallpay* is on the one hand a break in the daily routine and on the other a ritual act itself (see Andritzky 1989: 205). This can be noticed in the work breaks, which are often scheduled according to coca chewing rituals. In the daily routine of agrarian work the practice is performed at least six times a day⁴¹ and embedded in magical-ritual procedures which enforce social interaction and bonding. Ritual coca consumption in quotidian setting forms in that sense a connection between the contemporary traditional indigenous identity and the old Andean cosmology (see Andritzky 1999: 48f.). *Acullicadores* have often been equalized with addicts and the practice of coca leaf chewing is probably equally frequently associated with drug addiction behaviour. This, ignoring the fact that the amount of alkaloids freed in the practice of coca chewing can never be compared to snorting cocaine – coca leaves in their natural state contain a concentration of the alkaloid cocaine of 0,56 g/100 gDW⁴². Further more, the pharmacologist Nieschluz discovered, that in the contact with saliva and gastric juices the alkaloid cocaine is converted into ecgonine⁴³, which is by far less toxic than cocaine. The assumption prior to this discovery was that the juices swallowed during the chewing process would have an anaesthetizing effect on the digestive apparatus, because it was being asserted that the cocaine-lime combination was neutralized by the stomach's hydrochloric acids, thus producing a cocaine hydrochloride. But as the evaluated data showed that ecgonine was the dominant actor, this belief had to be revised and the assumption that coca consumption in ordinary traditional quantities was having an euphoric effect, similar to cocaine consumption, was not able to be maintained anymore (see Antonil 1978: 134). Additionally, abuse of coca leaf chewing would have to involve a quantity of more than 100 grams per day, which is hardly ever the fact in traditional consumption, as the average is estimated between 30 and 40 grams daily (see Schley 1992: 170)⁴⁴.

Nevertheless, regardless of the scientific facts, the very act of chewing and holding a bolus in the mouth is culturally quite repellent to people alien to this traditional practice and regarded as primitive or unattractive. It is highly implausible, that the habit would at some time become fashion in a totally different cultural setting. For example for western-world premises, it lacks the principal conditions for easy consumption and instant satisfaction and requires, what we

⁴¹ Other sources speak of four *Coqueadas* (coca chewing period) per day, of each two hours and a consumption of between 10 and 20 leaves per session. *Coqueada* is a highly common word in the Indigenous population and even often used for measuring distances (see Schmidbauer/v.Scheidt 1989: 188, 200).

⁴² This figure is taken from one of the most recent studies on the composition and nutritional facts of the coca leaf. For the scientific analysis the dry weight (DW) of the ground leaves was taken as a measure for expression and comparison to other nutritional goods (see Penny/ Zavaleta et al. 2009: 205).

⁴³ Molecular formula: C₉H₁₅NO₃, Ecgonine is a tropine, 80 times less toxic than cocaine (see Laserna 1997: 28).

⁴⁴ However, Boville Luca de Tena demonstrates a rather higher amount of coca leaves consumed daily. She suggests that the amount lies between 80 and 100 grams per day (Boville Luca de Tena 2004: 35).

might consider, too much care and effort from the consumer's side. Moreover, any novice who wants to experience *acullico* is confronted with the problem that it is in fact by far not an easy task. Because if the alkaline reagent is not applied carefully and in the right proportion, the gums will be damaged, in form of cauterization, and that most certainly would lead to a "burning" of the insides of the mouth (see Antonil 1978: 122). Interesting in this context is for instance that the Paez Indigenous People of Colombia have established a way of careful initiation into the habit, because of the delicacy of the tradition. It is common practice for a mother to first chew the quid for some time and add the right amount of alkaline reagent herself before transferring the bolus into the mouth of her child, in order to secure a harmless introduction into the tradition (see *ibid*: 124).

Carlos Gutierrez-Noriega, one of the most famous brain researchers in Peru, stated in 1949 that coca chewing on the long run would have the same effect like cocaine consumption. The intoxication from coca consumption was, in his opinion, one of the main causes for the health problems in South America and without doubt a major factor for the backwardness and degeneration of the people (see Lessmann 2009: 5). Declarations like that represent the often racist perspectives of foreigners, historically mainly from the white elites, in their contact with the traditional practice. Without having tried the practice, they apparently considered its use to involve mere mechanical chewing and "*a chomping and swallowing of the cud, as if the coca chewer were little better than a cow*" (Antonil 1978: 127). This notion harshly contrast of course with the delicacy and degree of care involved in accomplishing the right balance of alkaline reagent, saliva and coca leaves. What is more, it should be critically reviewed if an external observer could possibly ever be able to truly evaluate and assess the value and meaning of the coca chewing practice to traditional indigenous culture, identity and religion. The question is, whether a habit which exists for over thousands of years requires any more clarification and justifications for legitimacy, in international matters, or whether its sheer ongoing existence is actually a legitimizing element for itself.

Closely related to the traditional use of coca chewing is the habit of drinking coca tea, either pure (*Mate de Coca*), or mixed with anis and camomile (*Trimate*). This habit is fully integrated into Andean society, not only with regard to the Indigenous People. Tourists and visitors are often welcomed in the Airport of La Paz with a cup of coca tea, because its properties are very beneficial in the highlands, where the climate is very unfamiliar to the foreigners (see 2001: 30f.).

In the following, the role of coca in traditional, spiritual, healing rituals will be analyzed, but it will be made evident that the different traditional forms of use and consumption are closely intertwined, as coca chewing will come across the way in all of the different ways of cultural indigenous traditions in the Andean region, and is thus the dominant factor in all spectra.

3.3.3. Coca in traditional healing rituals and ceremonies

Si no fuera la coca, ¿Con qué cosa podríamos adivinar? ¿Que cosa podríamos pijchear como la coca día y noche? La coca es como un libro. La hoja de coca es como un diccionario para saber de una persona. Si no fuera la coca ¿qué otra cosa podríamos utilizar para saber de qué está enfermo?... Tengo que preguntarla para curarle. Si no, no podría curar (Citation of a Callahuaya Yatiri in: Alurralde Anaya 2002: 127).

There exist various different forms of spiritual, traditional healing in the traditional Andean Indigenous cultures. Although diverse in their forms of performance, what the traditions of the Aymara, Quechua and Callahuaya⁴⁵ people do have in common is the purpose for the healing rituals; Rösing terms it the *white healing* (as in contrast to black healing), which aims at keeping or restoring an equilibrium on all levels of existence. The motives and implementations are all deeply rooted and linked with other general foundations of Andean cosmology. In their respective beliefs, being healthy can not only be seen in reference to the physical condition but also involves being healthy and sacred as a human being in relation to others, to nature and the cosmos in general (see Rösing 1988: 567 *f.* and 591). Coca is of substantial importance in these ritual and religious ceremonies performed throughout the Andean region, because in its magical sense it facilitates and empowers not only the *curanderos*⁴⁶, *yatiris*⁴⁷ and other shamanic and magician personalities but also the individual itself in its protection from witchcraft and curses. It is the belief that coca can change bad luck or predict the future. Without the presence of coca the fortune teller would not be able to forecast the future, detect a patient's ailment or know how to cure it. For the practice of

⁴⁵ The Callahuaya people live in the highlands of the Bolivian Andes, northeast of Lake Titicaca (see Wurm et al. 1996: 1339).

⁴⁶ *Curandero* is a Spanish word for healer. *Curanderos* are said to be potent to heal diseases, to impact on events and also on feelings and actions of people. Moreover, they have visionary talents and are often appreciated in traditional Andean life for their power to predict the future (see Mader 1994: 10 *f.*).

⁴⁷ *Yatiri* is the name for traditional healers in the area of La Paz, Bolivia. They used coca as a medium for prediction and belong to the Aymara culture, dedicating their life to traditional medicine, astronomy and other spiritual sciences (see Alurralde Anaya 2002: 124*f.*). In other sources they are also called *Jampiri*.

healing itself the coca leaves are chewed, and then burned⁴⁸. For a diagnosis and prognosis of the situation the coca leaves are studied, concerning their appearance, setting (when on ground), etc. For a best functioning of the ritual a certain level of sincerity and mutual knowledge and connection of and among the groups is advantageous (see Cabieses Molina 1992: 31). While all elements part to the sacrificial offerings - like inter alia alcohol, fruits, bonbons, flowers, cinnamon, herbs, cigarettes, and incense⁴⁹ – are compensable and their utilization or composition is flexible, coca is not. The coca leaves represent the central element in the ritual ceremonies and can only be, in acute cases, substituted by coca seeds (see Leopold 2004: 80). Some of the traditional ceremonies are very time intensive and can last over several nights. Coca is chewed for a multiple of reasons, because of its strengthening effect and social, magical-mythic and religious aspects during the ceremony and in the breaks. Again, it is a mean of contact to the attributed spiritual sites for the traditional healers and of high importance when greeting and showing obeisance to *pachamama* (see Andritzky 1999: 57 and Rösing 1988: 592 – 594).

It can be perceived, that for characteristic cultural reasons, coca is used in rituals and praying in relation to the treatment of psycho-neurological syndromes of psychosomatic comprehension, where it plays an essential magic role for all participating agents.

Moreover, coca traditionally played/plays a fundamental role in the treatment of very “basic”, to the Western world familiar, ailments or diseases. These include toothache, stomach ache, sore throat, rheumatic pains, burns or frostbites, diarrhoea, other gastro-intestinal disorders⁵⁰ and the treatment of minor wounds, where coca is appreciated for its antiseptic qualities. Lastly, coca is also valued as a harmless but effective antidepressant and mild stimulant (see Cabieses Molina 1992: 30f.).

Drawing a picture of the prominence of the coca leaf from the time of its origin up to the present day in traditional Andean life, the words of Pérez seem to be quite condign to describe the content of coca:

⁴⁸ See Hurtado Gumucio 1995: History of the Coca Plant.

⁴⁹ See Andritzky 1999: 235 f.

⁵⁰ Although, interestingly enough, it has to be mentioned as well that there does not exist a clear scientific/medical explication for the beneficial properties of coca to the intestinal tract. One assumption among scholars is that ecgonine, one of the alkaloids contained in the coca leaf, has a direct effect on the smooth musculature of the gastro-intestinal tract (see Cabieses Molina 1992: 31).

*Planta andina por excelencia, planta sagrada, planta que expresa el corazón y la espiritualidad, planta para curar a los enfermos, planta alimenticia, planta que predice acontecimientos, planta para comunicarse con los espíritus, planta mágica, planta de ofrendas y rituales, planta de conocimiento, madre sabia*⁵¹

3.4. Nutritional and therapeutic properties of the coca leaf

The debate on the coca leaves' properties and nutritional values has been prominent for over centuries and has become subject to extreme ideological and politicised positioning – from: the coca leaf as a miracle and ultimate product of nature to: the coca leaf as the impersonation of all devil and a danger to the human system. For a long time, the debate has not been based on solid scientific grounds and diverse and impartial studies on the actual nutritional or therapeutic value and properties, for all people, still have to be performed. One of the impediments in this sense is of course the illegal status of the leaf in the international sphere, for which the scientific justification is based on a highly dubious study⁵², which completely lacks dissenting views (see Henman/ Metaal 2009: 4f.). One of the main problems is that universities will hardly invest in expensive and time-consuming studies if the focus and element of the study is globally condemned illegal⁵³.

What we do have is a genesis of traditional coca use of over thousands of years and in this regard, no significant harms have been detected in regard of traditional consumption of Indigenous People. The coca leaves have, since ages, been an integral part of the Andean diet, but the interpretation of this fact has often also caused ethnocentric or even cultural imperialistic statements on this matter. The Report of the Commission of Enquiry on the Coca Leaf for example stated that coca chewing

*[i]nhibits the sensation of hunger, and thus maintains, by a vicious circle, a constant state of malnutrition*⁵⁴.

This, regardless of the fact that it is very delicate to directly link traditional coca use with the daily consumption of nutrients, because it should be considered, that the traditional consumer

⁵¹ Pérez, Ana María, cited in Vacchelli Sicheri.

⁵² The study/report was conducted by the Commission of the Inquiry on the Coca Leaf, given mandate by the ECOSOC resolution 159 (VII) IV on August 10, 1948.

⁵³ This aspect was discussed in the course of the Interview with Pien Metaal.

⁵⁴ United Nations, Economic and Social Council (1950) Official Records, Fifth year: twelfth session. Special supplement No.I. Report of the Commission of the Inquiry on the Coca leaf, May 1950, Lake Success, N.Y., E/1666- E/CN.7/AC.2/1, Page 93, Chapter XIX, D I.

does not eat nor swallow the coca, but extract the juices (see Cabieses Molina 1992: 62). More over, it has often been underlined by Indigenous People who consume coca that they do not perform this practice out of food supplemental motives, but rather as a mild stimulant or out of other traditional and cultural reasons, like mentioned above. Carter and Mamani discussed in their extensive survey the circumstances under which the traditional consumers engage in the habit of *accullico* and found out that for the greatest extent the practice is performed for work in order to augment physical endurance, for social rituals and also in relationship to the need to relax, inter alia, after meals, for digestion. Thus, they showed that periods of *accullico* do not precede the meals, but instead followed them (see Laserna 1997: 23, 26) and hence disproved the often disseminated thesis that coca use is responsible for the poor diet in the Andean region.

Concerning the traditional use of the coca leaf there exists a thorough study, in fact the largest which has ever been undertaken, called *The Cocaine Project*. It is a joint work of the World Health Organization (WHO) and the United Nations Interregional Crime and Justice Research Institute (UNICRI) and was conducted between 1992 and 1994. Information was collected from 22 cities in 19 countries, and focus of the research was how cocaine and coca products (including the natural state of the coca leaf) are used, what effects they have on the users and the community and also how Governments handle the cocaine problem. The initial idea was to publish the WHO/UNICRI study in 1995, yet, that never took place. When the Director of the PSA⁵⁵ sent a copy of the Briefing Kit to the United Nations Drugs Control Programme (UNDCP, now UNODC) the content caused a sensation (see TNI 2003: 3). Shortly after, a decision in the 48th World Health Assembly was taken to ban the publication of the study. The reasons for this ban derived from highly political grounds: the US representative at that time, Mr. Boyer, threatened that if the *WHO activities relating to drugs failed to reinforce proven drug control approaches, funds for the relevant programmes should be curtailed* (TNI 2008: 21)⁵⁶. According to the official U.S. opinion, the study would undermine the efforts of the international community to demolish the illicit cultivation of coca and its results caused irritation due to its confirmation that traditional coca consumption was entirely innocuous (see Argandoña in TNI 2008: 40).

Regardless of the fact that it has never been published, and even more so – because it represents the political characteristics of the whole debate – the study is of paramount

⁵⁵ PSA stands for the World Health Organization Programme on Substance Abuse.

⁵⁶ Nevertheless, an unofficial sample of the study, an information package which represents the results gathered, is still available online at the TNI webpage.

importance for the present topic as it corresponds to an international multifaceted research and thus aims at providing the highest degree of objectivity possible. Therefore the key aspects in the study regarding the coca leaf will be presented in the following lines. In the results, it is stated that coca leaf chewing is the final pattern among various indigenous populations in Argentina, (the Plurinational State of) Bolivia, northern Chile, Ecuador and Peru, as well as some groups in Brazil and Colombia. Further more, that it forms the basis of subsistence economy of many peasant communities in (the Plurinational State of) Bolivia and Peru and that:

Consumption of the coca leaf is fully integrated into the Andean cultural tradition and worldview. For most users, coca leaf retains its sacred character (WHO/UNICRI 1995: paragraph 3.5).

The main motives for use are mentioned to be multiple ones: for an increase in energy for work purposes and to fight fatigue and cold (given the natural surrounding); For *medicinal* use, in infusions, syrups and poultices to treat diseases which are considered to have supernatural causes and express interpersonal conflict or conflict within the social structures of the community; For *sacred* use, in order to communicate with the supernatural world and obtain its blessing and protection; And for *social* use, the social cohesion and cooperation among the members of a given community and, importantly, for the reciprocal exchanges of work and sociability relations (see *ibid.*). As we can observe, in this study the traditional use patterns fully, even if shortly, reflect what has been mentioned above and is generally also been stated by representatives of Andean indigenous communities. It is additionally enshrined in their history. What is more, concerning the consequences of use, the study strictly separates coca leaf chewing⁵⁷/use from all other forms of coca derivatives uses. The participating respondents from Cochabamba emphasized that indigenous peasants in the region chew large quantities of coca leaves for over decades and have not shown any ill effects from extended use. The informants also noted, that coca provides a financial benefit as it assists the indigenous peasant communities to enhance other (partly traditional) production activities like farming, fishing and mining. In the case of the country profile of (the Plurinational State of) Bolivia the authors identify six groups of users, among those the Aymara and Quechua people, who *chew the leaves and exhibit no dependence or problems*. The people living in the

⁵⁷ As being the main internationally recognized and acknowledged form of traditional use – it can be assumed though, that all other types of traditional ingestion, like coca tea or also coca flour, do have the same effects like coca leaf chewing or even less “stimulating” ones (see chapter on nutritional value of the coca leaf and WHO/UNICRI 1995: paragraph 4.5).

Cochabamba region, also identified as a separate group, are mentioned to be coca chewers, who nevertheless reject the use of coca paste or cocaine HCl. In conclusion, the study emphasizes that both the country profile data and the key informant study, concerning (the Plurinational State of) Bolivia, gave reason to assume that coca leaf chewers suffer no adverse consequences, nor do they show symptoms of withdrawal⁵⁸ (see WHO/UNICRI 1995: Bolivia).

The study also states that,

While it is possible that there are some health problems associated with coca leaf use that are so far unrecognised, this seems unlikely (WHO/UNICRI 1995: paragraph 4.5; emphasis added).

And in the chapter on research and data system recommendations, the authors of the study underline that:

*WHO/PSA should research the impact on health at individual and population levels of different legislation and drug control measures; and
WHO/PSA should investigate the therapeutic benefits of coca leaf (WHO/UNICRI 1995: paragraph 7.4).*

In the realm of the WHO, this has so far not been fully taken into account. Currently, there is one study being undertaken by the European Commission, which can claim to reflect an independent international study on the aspects of traditional coca use in the Andean region (in this case (the Plurinational State of) Bolivia), but the results are not available yet⁵⁹.

There are, nevertheless, exhaustive scientific studies on the properties and ingredients of the coca leaf itself, of which some results should be analysed for the present purpose, in order to be able to understand the complexity of the debate and the recent developments (i.e. the Bolivian government's plan to industrialize the coca leaf as a harmless therapeutic, stimulating product). In analysing results, possible political motives and backgrounds should be taken into account, especially since the conclusions on the matter vary tremendously. In

⁵⁸ Traditional use is often curtailed on weekends and the people do not suffer from any symptoms of withdrawal.

⁵⁹ The title of the project is "Estudio Integral de la Hoja de la Coca en Bolivia" and covers 7 studies related to the coca leaf, in particular a national household survey of legal consumption of coca and a study on coca productivity (see in URL: http://www.eeas.europa.eu/la/drugs/projects_lac_en.pdf and for the various segments of the study: <http://hojadecoca.org/pag/estudios.html>).

any case, it is likely that the international community has more scientific information on the effect and impact of cocaine on the human system, than on that of its natural plant of origin.

3.5. Studies on the Nutritional Value of the Coca Leaf

In the attempt to reflect on the complexity of the scientific debate and to represent the differing opinions on the topic of the nutritional value of the coca leaf, some of the major studies will be discussed, in chronicle order, in the following. This part is important for the analysis, insofar as it represents the crusade on a natural good, highly important to the traditional lifestyle of Indigenous People, but historically highly stigmatized in its very existence. In this context, an analysis of its ingredients will be part of demystifying the coca leaf.

In 1950, like already mentioned, the **Commission of Enquiry on the Coca Leaf**⁶⁰ published a report on the habit of coca chewing, including, inter alia, the nutritional value of the leaves and recommendations concerning the issue. Apart from making a connection between coca chewing and malnutrition, the ECOSOC Commission included the following two paragraphs:

[Coca consumption] induces in the individual undesirable changes of an intellectual and moral character. This is especially clear in exceptional cases, and it is much discussed how far this is general. It certainly hinders the chewer's chances of obtaining a higher social standard;

*It reduces the economic yield of productive work, and therefore maintains a low economic standard of life*⁶¹.

Concerning the point of malnutrition, the Peruvian Commission on the Coca Leaf - which was led by the physician Carlos Monge and was working in parallel to the ECOSOC Commission, but had rather dissenting opinions on the nutritional aspect - made the observation that none of the typical diseases usually related to malnutrition⁶² ever existed in the Central Andes. This realization was never mentioned nor acknowledged by the ECOSOC Commission (see

⁶⁰ The outline of the study by the ECOSOC mission was a rather brief visit to Peru and Bolivia. A group of experts, led by Howard B. Fonda prepared the resulting document, which is said to be mainly based on the findings of two Peruvian psychiatrists, Noriega and Zapata Ortiz (see Henman/ Metaal 2009: 4).

⁶¹ UNODC Bulletin 1950.

⁶² Among those diseases are pellagra, beriberi, scurvy or rickets (see Henman/ Metaal 2009: 5).

Henman/ Metaal 2009: 4). In relation to the nutritive value, the ECOSOC report stated that the leaves contained some vitamins also to be found in fruits, vegetables or other green leaves, but that a consumption of those vitamins via the coca leaf is not advisable, because of the toxic substance cocaine. Moreover, it is negated that coca chewing is of any advantage to the people living in high altitudes. Interesting is also one of the statements in the Recommendations of the ECOSOC Enquiry Commission:

One of the basic observations of this Commission was that where the food is good and sufficient, chewing stops⁶³.

Taking this observation into account, it would mean that traditional indigenous coca consumption is either a farce, or people consuming coca out of traditional practice would never be able to reach an adequate food diet. Scholars criticized that the ECOSOC Commission did not adequately consider all the relevant literature available at that time and the fact that one gets the impression that the members of the Commission had been set up with a predetermined view of the final results (see Henman/ Metaal 2009: 5).

In 1975, a team from Harvard University Botanical Museum and the Agricultural Research Service in Betsville, USA, carried out another study on the coca leaf (**“The Harvard Study”**), and found out that the leaf contains a rich store of nutrients. For their study, they used coca leaves from the Chapare region in (the Plurinational State of) Bolivia and compared them to other 50 species of nutrients from Latin America. They used average nutrients of 30 food plants as a category for comparison to coca (see *ibid*: 7). According to the report, the ingestion of 100 grams of the studied coca leaves is equivalent to the advised daily ratio of calcium, iron, phosphor, vitamins A, B2 and E (see Alurralde Anaya 2002: 6). In the comparison to the other food plants, coca had in some aspects significantly higher nutrition levels⁶⁴.

When analysing the data of the Harvard Study, it is important to consider, that whereas 100 grams of, for example, maize per day is a very reasonable portion, 100 grams of coca are hardly ever consumed, not even among the most excessive *coquero*. Therefore, it is not very likely that coca could become a major food source like the compared substances (see

⁶³ UNODC Bulletin 1950.

⁶⁴ Particularly in the case of Phosphor, Iron, Vitamin B2 and Vitamin A coca showed a significant higher percentage of these properties, when compared to the average nutrients of 30 different food plants (see Alurralde Anaya 2002: 6; Henman/ Metaal 2009: 7).

Henman/ Metaal 2009: 5). But the high content of calcium, iron and of some vitamins deserves recognition and might be of interest for the alternative medicine field or as a form of substitute for people who have, for example, lactose intolerance. It would be necessary though, to perform multiple scientific studies, in order to evaluate a possible relevance in the alternative medicine, therapeutic area (see Interview Metaal 3.2.2010).

A report published by the **Peruvian Information and Education Center for the Prevention of Drug Abuse** (in its Spanish version: CEDRO)⁶⁵, criticized the Harvard Study's⁶⁶ results. In this respect it is argued that the factor of humidity was not taken into account in the appropriate manner. The results thus would not reflect the actual values, because dry products have been compared with humid products and it is moreover stated that, based on various studies in Peru, the coca leaf is not recommendable for consumption as a food supplement (see Castro de la Mata/ Zavaleta: 11). They further more underline that, on the background of four experiences from different studies, the acquired results are not satisfactory because they, in conclusion, present a marginal nutritional value, or an inefficiency of the elements and nutrients of the coca leaf to be adequately absorbed by the human body system. Continuatively, they regard the often postulated potential miracle effects in the geriatric field as being equally doubtful and the efficiency of coca for the patients as null (see *ibid*: 15 *f.*). What is important to consider though, is that for the two studies on which they base their major arguments, the coca leaves have been freed from alkaloids (de-cocainized).

The most extensive and recent study has been performed by a group of scientists⁶⁷ and was published in The United Nations University *Food and Nutrition Bulletin* in 2009. It is the first study that evaluated the bioavailability of nutrients from the form of ingestion of coca chewing and the first report of potential inhibitors of mineral bioavailability in the coca leaves (see Penny/ Zavaleta et al. 2009: 210). Their research objective was to analyse the nutritional potential of seven samples of Peruvian coca leaves (*E. coca var coca*), purchased from local suppliers in different regions⁶⁸, with the motive to provide a more complex analysis than previous studies have been able to offer, because they used only small samples of leaves. For

⁶⁵ The Centre is a private, non-profit organization established in 1986 in Lima, see: <http://www.cedro.org.pe/english/quienes.htm>.

⁶⁶ Further more CEDRO underlines, that what is commonly called the Harvard Study is basically a study from Duke et al., based on data published by the Peruvian Doctor Machado (see Castro de la Mata/ Zavaleta :7).

⁶⁷ Among the participating scientists were affiliates from the Instituto de Investigación Nutricional (IIN), in Lima; of CEDRO; the Chalmers University of Technology, Göteborg; ChromaDex, Colorado; Iowa State University, Ames, Iowa; and the Centro Latinoamericano de Investigación Científica (CELIN), La Paz.

⁶⁸ Plus one sample bought from *Mixtura Andina*, which sells dried, micro-pulverized leaf flour provided by ENACO.

their work they used AOAC⁶⁹ techniques to evaluate nutrients, nutrient inhibitors and alkaloid concentrations, expressed in 100 gram dry weight (DW) of the utilized ground leaves. Focus of the assessment was also to provide quality data for the discussion, which has been increasingly present in the last few years in Peru and (the Plurinational State of) Bolivia, about whether coca could have an important nutritional value in combating the dietary deficiencies in the Andean region or, as suggested, achieve a substantial role as a nutrient supplement or add-on to processed food (i.e.: in form of flour for bread). In their results, both the iron and calcium content were lower than in those of the Duke et al. study (the Harvard Study)⁷⁰, and with regard to Vitamin C, they did not detect any content of it in any of the leaf samples. One explanation for that is that in sun-drying the leaves for the study, in order to achieve dry weights for the comparison with other leaves, the Vitamin C content was reduced. Disparities in the results may be due to different soil and growing conditions of the coca plants, the age of the leaves, possible contamination of the soil or other materials and due to methodology of the studies. But in general terms, this recent study brought a new dimension to the debate in underlining that coca leaves show no significant nutritional advantage in terms of critical mineral content in the comparative analysis with other common leaves in the Andean human diet⁷¹. What is more, the scientists of the study assume that the alkaloid cocaine in the leaves causes an anorectic effect which represents a counterproductive appetite suppressant and exposes the people to toxic substances with harmful health risks (see *ibid*: 214).

It is essential to consider though, that firstly, the debate about the physiological and toxicological effects of coca chewing is a long and diverse one. As a general comment it can be said though, that given the history of the coca chewing populations the habit can be considered as a rather harmless process, even for those who chew the leaves with the higher cocaine alkaloid contents⁷². Secondly, although it would be necessary to eat 30 percent more of coca leaves (by weight) than of animal source products like eggs or milk to satisfy the

⁶⁹ AOAC, the Association of Analytical Communities, is a global provider of validated analytical methods and laboratory quality assurance programs and services (see for details URL: <http://www.aoac.org>).

⁷⁰ The iron content was 29.16/100 mg of coca leaf dry powder, which is in comparison 38 percent lower than the value reported in 1975. In respect to calcium, Duke et al. reported 1,647mg/100 g, (value corrected to dry weight) for the Bolivian coca leaf samples and 2,272mg/100 g (also corrected to DW) for the Peruvian coca leaf samples; whereas Penny et al. reported 990 and 1,033 mg/100 DW for their study (see Penny/ Zavaleta et al. 2009: 210f.).

⁷¹ They state that parsley, for example, has approximately three times as much iron as the average of the coca leaves; and bay, coriander and oregano have double as much. For a comparison with regard to the calcium content, oregano has 50 percent higher figure than the average of the coca leaves used for the study (see *ibid*: 212).

⁷² See chapters above.

essential amino acid requirements/ proteins (see *ibid*: 211), the possibility of coca leaf products should be at least considered in the area of lactose substitutes, for people who suffer from lactose intolerance. In fact, there have been positive experiments in this field already, which show a striking use of coca as a calcium source for geriatric populations⁷³, who show a pronounced intolerance to traditional sources of the mineral, like for example dairy products. Thirdly, although the study was not able to proof a nutritional advantage over other leaves in the form of ingestion through coca chewing or drinking of coca tea, no real disadvantages have been set out either. In genuine terms, their findings declare that traditional coca consumption neither has significant negative nor positive effects on the human system. It could also be of interest for the pharmaceutical industry to study the possibilities of separate extraction of the respective contents for processing into natural dietary supplements or alike. It is not out of question, that there might be a global market for such alternative suppliers of iron, calcium, magnesium etcetera, if it could be achieved to subtract the contents from the natural coca leaves and in the following make separate medicinal products with the respective ingredients. In this sense, more “modern” or practical forms of intake, such as tablets or powders, could be of importance as well. In parallel, the Indigenous People who cultivate coca would have an alternative market area to the now monopolistically characterized one: the cocaine market.

⁷³ An effective treatment was reported for geriatric diseases like chronicle anaemia, urinary infections and osteartrosis (see Henman/ Metaal 2009: footnote 13).

PART II

THE INTERNATIONAL LEGAL CONTEXT

“Drug Legislation”

4. International Law on coca and its derivatives

In the legislative field, provisions on drug (ab-) use started to enter the international and regional field in the late 19th century, but most provisions were still internal control mechanisms, established by the United States. The first regulations did not concern the coca plant itself, but first opium and then in the following the coca derivative cocaine (cocaine HCl). At the very beginning, the first approximations of a state towards the field of drug control came from internal regulations of the U.S., which represented interventions on national and federal level: in 1875 a San Francisco Decree banned the opium dens and the Federal Law from 1887 forbid Chinese opium imports into the U.S. (see Soberón 1994: 285*f.*).

The genesis of the regulations altogether reflects important changes in International Law, as well as political and economic interests of the decision making bodies and nations. In different historic moments societies and governments have imposed diverse control mechanisms and provision on use of substances that can alter the conscience, nowadays combined under the terminus *drugs*. It is of interest for this paper to draw a line between the first international agreements in the scope of these substances and the provisions at the present moment in order to provide a basic analysis of developments, changes and shifting perspectives and power relations in international drug policy. We will see that the historiography of drug control systems presents three different phases, starting with regulation, followed by prohibition and, the current one, criminalisation.

On the international level, the first important cooperation in drug control took place in February 1909, when the International Opium Commission met in Shanghai (the Shanghai Conference). It was convened by the U.S., attended by thirteen so called world Powers⁷⁴, and led to the signing of the first international convention to attempt the control of a narcotic, in 1912. The underlying motives for this first impetus of an international control mechanism are presented differently, according to different perspectives. The UN Chronicle, for example,

⁷⁴ Interestingly, sources vary concerning the number of participants, as i.e. TNI states that twelve countries took part in the discussions on international control on the opium trade (see TNI 2008: 55).

states that at the time of the conference, the international opium trade was already under harsh criticism, which was among other reasons due to the increasing addiction problems in the Far East and in the Colonial powers and also to the changing diplomatic and political loyalties within the realm of international relations⁷⁵. TNI and Ricardo Soberón take a slightly more critical stance and underline that the conference inter alia shows that the U.S. established right at the beginning a preference for a supply-side approach to tackle drug issues and thus symbolically externalised the blame for domestic problems (see TNI 2008: 55). Further more president Roosevelt received backup from the English government for his initiative, based on the fear that China could become a serious threat, if self-sufficient and subsequently, an important opium exporter. Shanghai did not establish any precise legal obligations but issued international recommendations concerning the opium trade, including a norm of limiting the trade for medical purposes (see Soberón 1994: 287). Geopolitical interests of the global powers were, according to this perspective, of determining importance for this first occasion of international drug control.

In Shanghai, the representatives from the U.S. had proposed a further conference in the future in order to draft an international drug control treaty that would include the Shanghai resolutions in an expanded and more stringent way. Thus, on the basis of the conference and as a direct follow up to it, in January 1912 the **The Hague Opium Convention** (hereinafter the International Opium Convention I, entry into force 1915) was signed⁷⁶. Party members to this treaty agreed to limit the manufacture, trade and use of opium products for medical purpose; to cooperate in order to restrict use and to enforce restriction efficiently; to close the opium dens; to penalize possession; and to prohibit the selling to unauthorized persons⁷⁷. The International Opium Convention I was the first international instrument which took differentiated restrictive actions against raw and prepared opium (Chapters I and II), against morphine, cocaine and their respective derivatives in their various phases of processing (Chapter III) and additionally recognized the U.S.-initiated principle of restricting opium use to medical and scientific purposes. With regard to the trafficking of opium, the convention imposes serious obstacles for the exportation of raw opium, including inter alia provisions of identification of opium packages and the prohibition of import or export of prepared opium. Crucial for the development of the drug legislation concerning the coca leaf and its derivative cocaine is especially Article 10, which states as follows:

⁷⁵ See UN Chronicle 1998.

⁷⁶ See Sinha 2001: B.

⁷⁷ See *ibid.*

The contracting Powers shall use their best endeavours to control, or to cause to be controlled, all persons manufacturing, importing, selling, distributing, and exporting morphine, cocaine, and their respective salts, as well as the buildings in which these persons carry on such industry or trade. With this object, the contracting Parties shall use their best endeavours to adopt, or cause to be adopted, the following measures, unless regulations on the subject are already in existence: -

(a) To confine the manufacture of morphine, cocaine, and their respective salts to those establishments and premises alone which have been licensed for the purpose, or to obtain information respecting the establishments and premises in which these drugs are manufactured and to keep a register of them;

(b) To require that all persons engaged in the manufacture, import, sale, distribution, or export of morphine, cocaine, and their respective salts shall be furnished with a licence or permit to engage in these operations, or shall make to the competent authorities and official declaration that they are so engaged⁷⁸;

The first steps towards a global drug control mechanism were set.

A few years later, after World War I, the international community was presented with a new centralized body, founded in 1919, which was inter alia suitable for global drug control: the League of Nations (hereinafter The League). Already in 1920 the League established the *Advisory Committee on the Traffic in Opium and other Dangerous Drugs*, the predecessor of the *United Nations Commission on Narcotic Drugs (CND)*. Additionally, the *League Health Committee* was created, which is the predecessor of the WHO (see Sinha 2001: 1 B).

Although the U.S. was not a member of the League, they still had a significant influential role in the upcoming international drug control matters. The League being pushed by the U.S. to again convene drug conferences followed their request, also out of worry that they would take independent action otherwise. They were convened in 1924 and 1925 (see McAllister 2000: 50 f.).

The output was that, following the International Opium Convention from The Hague, a **second International Opium Convention** (hereinafter International Opium Convention II) was concluded in Geneva, 1925 (entry into force 1928)⁷⁹. This treaty introduced a statistical control system to be supervised by a Permanent Central Board, the first international authority

⁷⁸ See Art. 10 of the International Opium Convention.

⁷⁹ Additionally to the International Opium Convention II, there was established another Geneva Convention which exclusively focused on the Opium producing countries (signed in 1925), called the *Agreement concerning the Manufacture of, Internal Trade in, and Use of Prepared Opium*.

in the field, which among other things created a system for import certifications and export authorizations in order to structure the legal international trade in narcotic drugs, limiting the amount of legal import allowed per country. In contrast to the International Opium Convention I, which was rather focusing on domestic control systems, the International Opium Convention II was focusing on improving the transnational control mechanism. The intention was to impose worldwide control over a variety of drugs, including, for the first time, cannabis – described as "Indian hemp" in Article 11 of the Convention. Moreover, the International Opium Convention II required the Member States to provide annual statistics on the drug stocks and drug consumption; the production of raw opium and coca; and the manufacture and distribution of heroin, morphine and cocaine (Articles 21-23) (see Sinha 2001: 1 C). It is important to add, that throughout the process the U.S. withdrew from the Conferences, as they were determined to discuss the topic of drug cultivation, but the other participants were focusing on discussing the manufacture of drugs (processed, prepared drugs). Also important to underline is that, at the time of signature of the text, neither the most important opium producing countries (Persia, Afghanistan, China and Turkey) nor coca producing countries (Peru and [the Plurinational State of] Bolivia) were present (see Soberón 1994: 290).

Next in line of the Conventions approved during the League era is the *Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs* (hereinafter the Limitation Convention), signed in Geneva in 1931. The goal was to intensify the past attempts to limit international trade in narcotic drugs and fortify the international control mechanism, as the previous Conventions were not able to tackle the problem fully as shipments were simply made through non signatory states. Key elements of the Limitation Convention for the special topic of this paper are, inter alia, the definition and classification of drugs under control in Article 1⁸⁰, the first reference to the term *addiction* of specific drugs (Art. 11/3)⁸¹, and in general the first explicit prohibitionist norms, covered in Articles 10-12, with reference to diacetylmorphine, the phenanthrene alkaloids of opium or the ecgonine alkaloids of the coca leaf.

In 1936, also in Geneva, the *Convention for the Suppression of the Illicit Traffic in Dangerous Drugs* was created as an instrument for combined international police effort to confront the

⁸⁰Group one, Subgroup A: "(iii): Cocaine and its salts, including preparations made direct from the coca leaf and containing more than 0.1 percent of cocaine, all the esters of ecgonine and their salts" (Art.1).

⁸¹ "The Health Committee will thereupon, after consulting the Permanent Committee of the Office international d'Hygiène publique, decide whether the product in question is capable of producing addiction (and is in consequence assimilable to the drugs mentioned in sub-group (a) of Group I), or whether it is convertible into such a drug (and is in consequence assimilable to the drugs mentioned in sub-group (b) of Group I or Group II)" (Art. 11/3).

issue of illegal trafficking. The initial input for this convention came from the International Police Commission, the predecessor of the International Criminal Police Organisation (INTERPOL). In the core of the included provisions are certain forms of co-operation on the international level for the extradition of drug traffickers (see *ibid*: 292). Initially, the U.S. aimed at a way more stricter provision than the final outline of the treaty (mainly only covering illegal trafficking), as they attempted to establish the criminalization of all activities related to the use of opium, coca (and its derivatives) and cannabis for non-medical and non-scientific purposes, which would have meant the penalization of cultivation, production, manufacture and distribution of these substances. Not achieving their goal in the end, the U.S. then refused to sign the convention. Despite being a rather insignificant international treaty, it represents a turning point in terms of linguistics, which in the following became more criminological and the activities of drug trafficking started to become subjects of international penal sanctions (see Sinha 2001: 1 E and Soberón 1994: 292).

The next important development(s) happened already under the administration of the newly formed United Nations, which took over the drug control bodies and functions of the League. A key body since the very start on is the United Nations Economic and Social Council (ECOSOC) and its inherent Commission on Narcotic Drugs (CND). The legal foundations for the respective necessary amendments were grounded in the Lake Success Protocol, signed in 1946 (see Sinha 2001: 1 G). An international protocol, signed in Paris in 1948 (hereinafter the Paris Protocol), gave substantial authority to the WHO in matters regarding the classification of substances under control. In other terms, concerning the classification of new drugs which are *capable of producing addiction or of conversion into a product capable of producing addiction*⁸² the decision making power is within the WHO. Crucial for the topic of the control mechanism of the coca plant in its natural form is that the Paris Protocol did explicitly exclude the coca leaf itself from the respective scheduling of substances. Article 4 reads as follows:

*The present Protocol does not apply to raw opium, medicinal opium, coca leaf or Indian hemp as defined in article 1 of the International Convention relating to Dangerous Drugs signed at Geneva on 19 February 1925, or to prepared opium as defined in chapter II of the International Opium Convention signed at The Hague on 23 January 1912*⁸³.

⁸² Article 1 of the Paris Protocol, see UNODC Bulletin 1956.

⁸³ Article 4 of the Paris Protocol, see *ibid*.

Accordingly, no modifications regarding these substances were made. Essential to note from a political perspective is that mainly the North American representatives lobbied for the CND to be authorized to report directly to ECOSOC as an independent body, in order to avoid that a more health and social matters oriented institution would become an actor in that field, which might have undermined the prohibitionist focus. The underlying motive was to ensure that law enforcement officials and not physicians, sociologists or people with a public health background hold the strings in the respective governmental representations (see Sinha 2001: 1 H/ I).

The international instruments and conventions concerning drug control so far do fall under the scope of the *regulation-era*. In a nutshell, the first treaties were more of a regulatory than a prohibitive nature, aiming at structuring an otherwise likely uncontrollable free trade in narcotic drugs. The series of treaties and other legal instruments show a comparatively loose but increasingly more and more rigorous set of regulations for opiates, cocaine and cannabis, but without the criminalisation of the substances, their producers and cultivators and their consumers. Most of the countries were at that time still reluctant to follow fully the rather punitive and “zero tolerance” model the U.S. was trying to establish on international grounds (see TNI 2008: 56).

This situation will change significantly though, with the origination of a politically distinct era of drug control, dominated by prohibitionist provisions, mainly represented by the three international drug-related treaties which will be discussed in the following part.

4.1. The UN Single Convention on Narcotic Drugs

I am a cocalera. I owe my life to coca. My father died when I was 2 and my mother raised six children by growing coca. I was a farmer myself, growing coca for traditional purposes. But the United States says it is better for us to just forget about coca (Zurita-Vargas, 2003).

This statement of a *cocalera* woman, who is also Secretary General of Bartolina Sisa, an association of peasant women, reflects the sensation of ignorance and lack of knowledge on the implications of international policies on the local realities, which Indigenous People often report in the context of international control of the coca leaf. I cited her words in order to

introduce a new era in international drug control, for which a critical approach will be fundamental.

Entering the second phase of international drug policy and legislation, a phase embossed by ways of prohibition, it will now be essential for this study to discuss one of the most dominant and for my research purpose most important international instruments concerning the global perspective on and the underlying stigma of the coca leaf. In the second half of the 20th century the international community found itself more and more confronted with a high complexity and number of various legal instruments covering issues of international drug control. As a consequence aspirations were voiced for unification and merging of the existing multilateral norms into a single one. Thus, the establishment of the **UN Single Convention on Narcotic Drugs** (hereinafter the Single Convention) has a twofold background: legally, there existed the necessity to simplify or unify the international provisions in the area and streamline the UN drug related supervisory bodies⁸⁴, and politically there existed the desire to establish a level of universal structure of drug control. Critical views also express that only after the second World War had the U.S. the necessary hegemonic superiority obtained and so the political conditions ready, for a certain globalisation of U.S. dominated anti-drug policies and ideals under the system of the United Nations (see TNI 2008: 56)⁸⁵.

The appearance of the Single Convention in International Law goes back to an ECOSOC initiative (Resolution 689 J from 1958). The preparatory work was done by CND, the Commission on Narcotic Drugs (of ECOSOC). The Single Convention was signed in 1961 (entry into force 1964) and has been amended by the 1972 Protocol. Like mentioned before, the treaty unifies and replaces the previously existing multilateral instruments and has in the core of its content the exclusive limitation of the use of various psychoactive substances to medical and scientific purpose and the gradual elimination of non-medical use of opium (within 15 years after entry into force of the treaty) and coca and cannabis (within 25 years). At the very beginning, in the Preamble, the instrument states that an addiction to *narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind* and underlines that states who are a party to the Single Convention therefore have the duty to *combat this evil*. This wording already reveals the rather moralistic

⁸⁴ The new supervisory body, the INCB, basically covers all the relevant functions.

⁸⁵ One fact, which would support this view, is the inclusion of a very specifically worded provision concerning the coca leaf as a flavouring agent in an otherwise rather unspecific wording of the Articles on this natural plant. This aspect will be discussed more in detail, when analysing the relevant provisions of the Single Convention.

justifications which will form the basis for the international drug control system and their according impact on national policies.

For the achievement of its objectives the Single Convention creates an explicit classification system of the various psychoactive substances under control (in total 108), scheduling them in four different Lists. The drugs in Schedule I are, according to Article 2 (1) of the Single Convention, subject to all measures of control applicable to drugs under the treaty – and to measures regarding the restriction for medicinal use, provision of mandatory statistical information and limitation of production. Both the coca leaf and ecgonine (derivates which are convertible to ecgonine and cocaine) are included in the Schedule I list⁸⁶. Additionally, the Single Convention creates specific provisions for the three natural plants: the coca bush (leaf), the cannabis plant and the poppy straw (and opium poppy)⁸⁷. Important actors with respect to area of application of the control of these substances are the parties to the convention, the WHO and the CND. The WHO is responsible for the scientific and technical appraisal and the CND is the body with the political decision-making power – be it concerning the inclusion of new substances or the modification of the existing Lists (see Soberón 1994: 294 and Art. 8 of the Single Convention).

The treaty moreover launches a new body, the International Narcotics Control Board (INCB)⁸⁸, which is mandated to secure the adequate availability of the narcotic drugs, which are subjects to the Single Convention, for legitimate purposes and to monitor treaty compliance. The INCB is entitled to ask governments for explications concerning certain behaviour (Art. 14 (1a)), call upon Governments to adopt remedial measures (Art. 14 (1b)) and prepares annual reports on its work and the estimates and statistical information at its disposal, including, if deemed necessary, recommendations and observations. The reports are submitted to ECOSOC (through the CND) and also communicated to the states party to the Single Convention (Art.15 of the Single Convention)⁸⁹.

In principle, the Single Conventions is targeted at the plants of natural origin and focuses on the prohibition of their cultivation (for public health reasons), the fight against illegal trafficking of them and their derivates and, in the case of opium, sets out the establishment of National Opium agencies, responsible for the monitoring of legal opium poppy for licit opium production (see Soberón 1994: 295). It raises the possibility, without establishing the requirement to do so, that countries could explicitly prohibit the cultivation of the three plants

⁸⁶ See The UN Single Convention on Narcotic Drugs, Schedules.

⁸⁷ Main Articles are 26 and 27 of the Single Convention.

⁸⁸ See Article 9-16 of the UN Single Convention on Narcotic Drugs.

⁸⁹ For a summary of the forms and functions of the INCB see its webpage, URL: <http://www.incb.org/incb/index.html>.

in question (Art. 22) and in doing so sets up an administrative system aimed at the control and the eradication of the crops and the establishment of administrative as well as criminal prohibitions on the mentioned activities under a system of state control, through national bodies and agencies (Art. 23 and 26).

Scholars argue, that the treaty was heavily biased to control natural plant originated drugs, which at that time were mainly located in the so called developing countries. It can be read in line with the pre-war colonial era's principle preoccupation with opium, coca and cannabis. For a critical analysis the decision to include some and leave out others (i.e. alcohol and related substances) should be reflected upon (see TNI 2008: 56).

Despite of the fact that it is important to see the establishment of the Single Convention in its entire outline and the relation between the provisions of the three specific natural plants, for the purpose of this study it will be now of specific interest to focus on the provisions concerning the coca leaf, the argumentation lines and reasoning for its inclusion and the critics concerning the same – giving due recognition to the point of view of the Indigenous People of the Andean region, who to a large extent see themselves affected by the provisions of the Single Convention.

The Single Convention strictly differentiates between coca leaves which contain an alkaloid percentage – those leaves are covered by the treaty – and coca leaves which have been de-cocainized (of which the alkaloid has been extracted). The latter are not covered by the Single Convention and can therefore be commercialised without control (see Art. 1 f.). The two main Articles covering the coca leaf (bush) are 26 and 27. Article 26 reads as follows:

1. If a Party permits the cultivation of the coca bush, it shall apply thereto and to coca leaves the system of controls as provided in article 23 respecting the control of the opium poppy, but as regards paragraph 2 d) of that article, the requirements imposed on the Agency therein referred to shall be only to take physical possession of the crops as soon as possible after the end of the harvest.

2. The Parties shall so far as possible enforce the uprooting of all coca bushes which grow wild. They shall destroy the coca bushes if illegally cultivated.

It is essential to make clear, that parties to the Single Convention are able to make a temporary reservation to the provision in line with Article 49 (1), which would imply the right to permit coca leaf chewing, and the production of and trade in coca leaves for chewing.

Nevertheless they must apply the provisions of article 26 (1) to the cultivation of the plant and to the trade in the leaves undertaken for this purpose.

The mechanism established through the Single Convention concerning the coca plant presents an additional exception beyond those allowed for medical and scientific purpose: farmers are not obligated to sell their harvest exclusively to an agency (as it is established for opium) and hence the parties to the Single Convention are not compelled to create a state monopoly on coca (although Peru has such an institution, *La Empresa Nacional de la Coca*, ENACO). The state agency is only required to take material possession, but the producer is, at least technically, able to personally sell his harvest on the local markets (see Metaal/ Jelsma et al. 2006: 5).

Concerning the ways of eradication of “wild” coca cultivation (as prescribed in paragraph 2) the Commentary on the treaty states that the provision seems to prescribe a specific method, namely *uprooting*, by which coca bushes growing wild should *so far as possible* be destroyed. Thus, while the Single Convention is referring more generally to the destruction of illegally cultivated bushes, it does not mention the particular way in which this should be done. It is, however, interpreted by the Commentary that, if the problem is examined in the light of the goals of the Single Convention, any effective method of destroying the bushes which grow wild would be satisfactory⁹⁰. Important is moreover, that cultivation is referred to as being wild, not intentional. Its focus therefore is not the *de facto* more important cultivation for drug trafficking, as this aspect is dealt with in Article 22:

1. Whenever the prevailing conditions in the country or a territory of a Party render the prohibition of the cultivation of the opium poppy, the coca bush or the cannabis plant the most suitable measure, in its opinion, for protecting the public health and welfare and preventing the diversion of drugs into the illicit traffic, the Party concerned shall prohibit cultivation.

The norm consequently states that only when deemed necessary for *protecting the public health and welfare and preventing the diversion of drugs into the illicit traffic* cultivation must be prohibited. Interestingly, the Commentary also makes a remark on how this provision is related to governments who do not see themselves (their own populations) affected with abuse of the drugs concerned in significant quantities. It is affirmed that also in this situation the prohibition of cultivation is still the most suitable measure for preventing diversion into illicit channels and for protecting the public health and welfare of foreign countries⁹¹.

⁹⁰ See the Commentary on the Single Convention on Narcotic Drugs, Art. 26.

⁹¹ See the Commentary on the Single Convention on Narcotic Drugs, Art. 22.

Considering that especially cocaine consumption is a rather new and rare phenomenon in the producing countries, this provision is naturally of certain importance, especially in the light of global policies which are often very much supply-side orientated.

A politically quite intriguing fact is, that the coca leaf issue has been granted an “additional provision”, which scholars have often described quite undoubtedly as the Coca-Cola Article or Paragraph (see Soberón 1994: 295, Interview Metaal 3.2.2010, Interview Lessmann 11.2.2010). The respective Article 27 (1) concerning this additional provision indicates as follows:

1. The Parties may permit the use of coca leaves for the preparation of a flavouring agent, which shall not contain any alkaloids, and, to the extent necessary for such use, may permit the production, import, export, trade in and possession of such leaves.

The Article represents a permanent exception from the general requirement of Article 4(c)⁹², because the leaves, that is, the substance remaining after the making of the flavouring agent, are not under the control of the Single Convention anymore if all alkaloid contents have been removed, since at this point they cease to be *coca leaves*, and consequently also cease to be *drugs* in the sense of the Single Convention⁹³. It can be said, that the inclusion of this specifically worded Article in an international treaty is quite extraordinary, given the fact that hardly anybody (any country) regarded the coca leaf as a big issue on the political as well as legal agenda at that time. The coca leaf itself, in 1961, did not yet represent the global threat to public security which it does now, and thus the existence of Article 27 naturally has flourished debates about political conspiratorial happenings behind the scenes. Some scholars have hypothesized about some kind of involvement of business representatives in the negotiation phase of the Single Convention, in order to secure the continuity of (western) industrial business with coca leaves. Others, on the other side, have doubted a *de facto* conspiracy and only regard the Article as legally quite astonishing (Interview Lessmann 11.2.2010 and Interview Metaal 3.2.2010). In the words of the Commentary, the limitation will in any case be *of little if any practical importance* and it is assumed that the *cocalero* will

⁹² *Subject to the provisions of this Convention, to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs*, Art. 4 of the Single Convention.

⁹³ See the Commentary on the Single Convention on Narcotic Drugs, Art. 27 (1).

not know whether his leaves will be used for the extraction of the flavouring substance or other purposes when he collects his harvest⁹⁴.

Excuse: Coca and Coca-Cola (BOX)

By far the most well-known product with coca as an ingredient, which has had an incredible impact on the coca debate itself as well, is Coca-Cola. The drink of John Styth Pemberton entered the markets in 1886 and was at the beginning seen as the new magic liquid. But when in 1888 G. Chandler bought the Coca-Cola rights, medical studies stopped and the product was simply promoted as a refreshing liquid with a stimulating effect. At that time, Coca-Cola was a type of syrup, containing cocaine, caffeine and cola nut extracts, mixed with carbonated water. From 1903 onward de-cocainized coca leaves have been used for the product, because the Coca-Cola Company got aware of the growing tide of sentiment against cocaine⁹⁵. The developments of Coca-Cola and the underlying demonstrated power relationships is of special interest for this paper, as it can be seen as the pioneer example of the sort of double standards typical for the drug business. When in 1961 the United Nations Single Convention on Narcotic Drugs prohibited and penalized the coca leaf as a Schedule I substance⁹⁶, there was one Paragraph included which allowed the use of de-cocainized leaves as flavouring agents. The inclusion of such a specific permanent *exception from the general requirement*⁹⁷ is quite astonishing, given the fact that coca was *de facto* not a big deal at that time, and one should critically reflect on the impact of power relations on global policies – in that case, those of the Coca-Cola Company (Interview Lessmann 11.2.2010). A certain degree of irony can be deduced insofar as the leaf itself is legally banned worldwide (except for traditional use in [the Plurinational State of] Bolivia and Peru) to all but this powerful soft-drinks monopoly, allowing its properties to be commercialized exclusively by those who call their product the “Real Thing”. In practical terms, the fact that coca is allowed as a flavouring agent means that Trujillo coca leaves (*E. novogranatense*) are legally exported from Peru to the Stepan Company of Maywood, who have the monopoly in de-cocainizing the leaves for later Coca-Cola production (see Antonil 1978: 108 and Interview Lessmann). The company carries out a

⁹⁴ See *ibid.*

⁹⁵ Public pressure in the US and Canada grew bigger at the beginning of the 20th century and thus the Coca-Cola Company was on the right track with de-cocainizing the ingredients of its product. In fact, The Pure Food and Drug Act of 1906 specified, for the US, that all active ingredients had to be listed on patent medicine labels and in 1914 the Harrison Narcotics Tax Act further restricted cocaine use (see Levinthal 2008: 88).

⁹⁶ A more detailed and thorough analysis of the Convention will follow in the subsequent chapter on International Drug Legislation.

⁹⁷ See Commentary on the Single Convention on Narcotic Drugs, Art. 27 (1).

chemical procedure, one of its primary responsibilities since 1903, in which they remove the cocaine from high-grade coca leaves. The remainder, technically called “decocainized flavour essence” or “Merchandise No. 5”, is the new de-cocainized substance, a vegetable extract that continues to form part of the “secret formula” of the popular soft drink (see Rivera Cusicanqui 2007: 61). Each year, the Stepan Company is legally sanctioned by the U.S. government and quite carefully observed by the US Drug Enforcement Agency (DEA) from the point of receiving shipments of about 175,000 kilograms of coca leaves, originated from Peruvian coca plantations and sold exclusively by ENACO, until the procedure of chemical separation of cocaine, which results in a production of about 1,750 kilograms of high-quality cocaine. The annual output of this process is equivalently worth about \$200 million, if the remainings were to make it to the illicit drug market. The extracted cocaine is sold by the Stepan Company to surgeons worldwide, because used as a local anaesthetic the tincture of cocaine is still appreciated in minor surgical procedures. This means, Stepan Company holds the privilege of being *the* influencing agent on both markets (see Levinthal 2008: 89). Additionally, there exist a number of smaller brands which also create products including coca as a flavouring agent, of which some do, in contrast to Coca-Cola, explicitly market their products as containing coca leaves, even though there is no active coca-derived content. These brands are, inter alia, Red Bull Cola, Kdrink, Kokkawine and Agwa⁹⁸. The utilized coca leaves for their liquids have been de-cocainized in order to be in line with international law.

Recently, there has also been news about a new Bolivian product, which is marketed under the name of “Coca Colla” (Colla being one of the names for Andean tribes who cultivate coca in the areas bordering Bolivia, Chile and Argentina). In contrast to the other products, Coca Colla is composed of, among other substances, coca leaves in their very natural form (that is, including their natural percent of the alkaloid cocaine). The idea comes reportedly from *cocaleros* of (the Plurinational State of) Bolivia and was taken up by the Bolivian president Morales Ayma, who wishes to achieve an industrialization of the traditional plant and thus new mean of subsistence for its cultivators. This announcement also reflects another step in the efforts of the Bolivian government to voice for a legalisation of the coca leaf and, to a certain extent, also a provocation of the U.S. and international drug policies, particularly due to the outline of the drink, which shows great resemblance to famous Coca-Cola⁹⁹. As we will

⁹⁸ See the respective webpage: www.redbullcola.com, www.kdrink.com, (which actually cite Cowley on their page: *Each coca leaf has such an important physiological value that no other fruit in the nature would dare challenge it*), www.kokkawine.com and www.agwabuzz.com (a liqueur derived from coca leaves).

⁹⁹ Resources for this information are mainly newspaper Articles, see i.e. Käufer 2010; Carroll 2010; and Schipani 2010.

see below though, the entrance of products containing coca leaves with their natural share of alkaloid, like the new Coca-Cola drink, are still legally prohibited from entering a free market in most of the world's countries outside the Andean region, because the plant is still banned and subdued to very strict trade limitations under UN treaty law.

Finally, a fundamental element of the Single Convention is the inclusion of coca leaf chewing (with indirectly referring to it as a traditional habit) in Article 49 in form of a time-restriction to the possible "transitional reservations". Because of its importance, the Article shall be cited here in its relevant parts:

1. 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;

2. The reservations under paragraph 1 shall be subject to the following restrictions:

a) The activities mentioned in paragraph 1 may be authorized 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.

*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**¹⁰⁰.*

So, although parties who can report of such *traditional* use could take advantage of the delayed implementation (for others, prohibition was immediate), as the maximum time period ended over 20 years ago, these practices are at the present moment fully prohibited and the scheduled drugs may be used only for domestically regulated medical and scientific purposes (see Sinha 2001: 2 A).

Additionally, according to a representative from UNODC, the Andean countries have in reality never made use of this transitional reservation and hence the right has not been reserved and the temporary permit of coca-chewing never existed in the legal practice. In any case, after the year 1989 (limit of the 25 years temporary permit covered in Art. 49), legal coca-chewing does not exist in International Law (Interview Pietschmann 25.3.2010). The Single Convention demands, in the form of an internationally binding treaty to be enforced and implemented by the respective governments, the abolishment of coca leaf chewing. Besides the legal implications for these countries where the habit has been traditionally

¹⁰⁰ Emphasis made by the author.

performed, one might argue that the very existence of the Single Convention represents a global stigmatization and intolerance towards the essential element of Andean traditional society and cosmology.

The question that now arises is why the coca leaf has been included into the Schedule I List in the first place. The main rationale for the inclusion is based on one report, which was requested by the United Nations and issued by the permanent representative of Peru, which unfortunately is nowadays apparently impossible to find (see Metaal/ Jelsma et al. 2006: 5). The report was prepared by a Commission, the *Commission of Enquiry on the Coca Leaf*, which was mandated to study and investigate the effects of coca leaf chewing and possible limitation of production of the coca leaf and its distribution. One of the commissions tasks was to *assemble a body of evidence, of strictly scientific validity without prejudging the results of the Commission's work to state now that some of the effects which the leaf has on coqueros*, but it was in the same phrase already stated that the *similarity between the effects which the coqueros themselves say result from their chewing and those observed from clinical studies of the results of repeated doses of cocaine on the human body would seem to leave very little doubt on this score*¹⁰¹. It seems rather obvious what the original expectations of the actors involved in the commission were like and hence it is not surprising that the findings and conclusions of the Commission, after the accomplishment of its work, concerning the effects of coca-chewing were negative. According to the report, the habit of chewing the leaves has several harmful effects, on the individuals performing the practice as well as on the nation as a whole. It was declared that, firstly, coca-chewing inhibits the sensation of hunger and in doing so maintains a vicious circle of constant malnutrition. Secondly, that it brings forth some undesirable changes in the individual concerning intellectuality and morals. In this context it was mentioned in the report of the Enquiry Commission that this is especially true in exceptional cases and that in more general terms coca-chewing definitely *hinders the chewer's chances of obtaining a higher social standard*. Thirdly, that the habit has negative effects on the economic yield of productive work and *therefore maintains a low economic standard of life*¹⁰². In the years following its publication, the report of the commission was often sharply criticised of being based on arbitrariness, lack of precision, lack of scientific basis and racist connotation towards the Indigenous People (see Metaal/ Jelsma et al. 2006: 6). It reflects to a certain extent the contemporary stigmatization by the powerful ruling white

¹⁰¹ See UNODC Bulletin 1949.

¹⁰² United Nations, Economic and Social Council (1950) Official Records, Fifth year: twelfth session. Special supplement No.1. Report of the Commission of Enquiry on the Coca Leaf, May 1950, New York: United Nations (E/1666- E/CN.7/AC.2/1).

elites of the “Indios”, their traditional habits and ways of life (see Lessmann 1994: 21). Especially the methodology, the scientific research and basis of the report raise serious doubts if analysed from an academic and critical point of view. In principle, all of the alleged harmful effects which were postulated in the report could easily be confuted with a series of scientific arguments. It is moreover highly doubtful that at our times a study comparable to that of the commission would pass as a scientific and independent critical review. Nonetheless, the more than 50 years-old report continues to be the only argumentative basis for the international ruling against the coca leaf. Additionally, even the initial perception of coca-chewing not being an addiction but a habit has been revised when the WHO Committee of Experts on Drug Dependence in 1952 concluded that the habit would come so closely to the characteristics proper to an addiction that it must in fact be defined and regarded as an addiction¹⁰³; and two years later, that it must be considered as a form of “cocainism”¹⁰⁴. Also, the Commission on Narcotic Drugs, in reliance on the report of the Commission of Enquiry on the Coca Leaf, stated officially in 1952 in its submitted recommendations to ECOSOC that:

The Commission recommends the Council to request the Governments of Bolivia and Peru to take the necessary steps to limit immediately the production of coca leaves to licit consumption and manufacture (CND 1952: 1).

Several points of discussion essential to this work are closely linked to the Single Convention and its provisions, including some recent development on a global political scale. They will be treated in a later part, because for structural reasons I will first complete the legislative instruments existing in the field, in the attempt to avoid confusion.

The second international provision concerning drug control is the **Convention on Psychotropic Substances** from 1971¹⁰⁵, which establishes an international control system for the respective substances and introduces control mechanisms over a variety of synthetic drugs according to, on the one side, their abuse potential and, on the other, their therapeutic value. This convention is not per se of special interest for the present topic and will therefore not be treated in more detail.

¹⁰³ See WHO 1952: Section 6.2: 10.

¹⁰⁴ See WHO 1954: Section 6: 10.

¹⁰⁵ Established by ECOSOC Resolution 1474 (XLVIII).

4.2. The UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances

The most recent legal development of the global drug control system is situated in the 1980s, when the phase of the quite famous *war on drugs*¹⁰⁶ and drug-criminalisation started to kick off. Especially drug trafficking was lobbied, mainly by the U.S., to represent a “lethal” threat to public security. A massive increase in the number of military assets and personnel focusing on counter-drug efforts was to be observed. On the global scale, the world politics and power relations shifted with the fall of the Berlin Wall, which, inter alia, put the anti-communist rationale of the U.S. for excessive military budgets and operations abroad into trouble. The pentagon was given a, not new but increasingly primary and significant, anti-drugs role (see TNI 2008: 57).

In the context of this political background, the **UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances** (hereinafter the 1988 Convention) was established in 1988. It symbolises the so far last chapter of joint international drug control, this time focusing on the issue of drug trafficking. In general, the treaty represents a multilateral underpinning of an increasingly aggressive attack (war) against all aspects of the international drug trade. In detail, the 1988 Convention sets out penal control and includes offences and sanctions provisions (Article 3), which cover the whole spectrum of the drug-related offences: cultivation, production, manufacture, preparation, offering, possession or purchase, transport, distribution, assistance etc. and the participation, association or conspiracy in relation to the outlined offences¹⁰⁷. The 1988 Convention enforces the drug-control co-operation mechanisms in International Law, particularly on the judicial and police level¹⁰⁸. It does, in contrast to the two previous conventions, even amount to a penalization of personal consumption, which shall be established by each party under its domestic law¹⁰⁹. Very few other UN conventions impose criminal penalties for individual adult conduct; the only ones which are vaguely comparable convention provisions are those concerning the

¹⁰⁶ The terminus was first established by the U.S. president Nixon, back in 1968. The actual deployment of the wording's content, that is, U.S. military abroad did start much later though, in 1983, when Special Forces entered the Andean region for counter-narcotics training (see TNI 2008: 57).

¹⁰⁷ For a full outline of the activities under sanction see UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Art. 3. Cultivation of the coca bush is explicitly mentioned in section a (ii): *The cultivation of opium poppy, coca bush, or cannabis plant for the purpose of the production of narcotic drugs contrary to the provisions of the 1961 Convention, the 1961 Convention as amended.*

¹⁰⁸ Relevant Articles in that context are Art. 5, confiscation; Art. 6, extradition; Art. 7, mutual legal assistance and Art. 9, other forms of co-operation and training.

¹⁰⁹ See The Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances: 80.

prohibition of torture, crimes against humanity, human trafficking and sexual exploitation of children. Quite evidently, those are on a different level of magnitude than adult drug use (see TDPF 2009: 171*f.*). The 1988 Convention can thus essentially be considered as an instrument of International Criminal Law.

One Article, number 14, is of fundamental interest in the context of international legislation concerning the coca leaf. It shall be cited above:

1. *Any measures taken pursuant to this Convention by Parties shall not be less stringent than the provisions applicable to the eradication of illicit cultivation of plants containing narcotic and psychotropic substances and to the elimination of illicit demand for narcotic drugs and psychotropic substances under the provisions of the 1961 Convention, the 1961 Convention as amended and the 1971 Convention.*
2. *Each Party shall take appropriate measures to prevent illicit cultivation of and to eradicate plants containing narcotic or psychotropic substances, such as opium poppy, coca bush and cannabis plants, cultivated illicitly in its territory. The measures adopted shall respect fundamental human rights and shall take due account of traditional licit uses, where there is historic evidence of such use, as well as the protection of the environment¹¹⁰.*

The wording of the first paragraph above all underlines, that the measures taken under Article 14 shall be seen as a supplement of the other two conventions in the field and do not produce any conflicts with those, especially when read in conjunction with Article 25 of the 1988 Convention¹¹¹. Prior to the final version of the Article a rather lengthy discussion took place around the inclusion of the “traditional licit use” provision and the omission of the reference to the two other Conventions. The point (of various ethnic groups) was to ensure that the measures and norms established through the Article would not penalize the licit cultivation and use of the coca leaf for traditional purpose. A connection was also desired between these traditional rights and basic human rights. A number of delegations regarded any omission of reference to the Convention as troublesome because it would amount to a creation of discrepancies between the Conventions. Thus the final outcome was that both ideas were

¹¹⁰ UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Art 14, paragraphs 1 and 2.

¹¹¹ The Article reads as follows: *The provision of the Convention shall not derogate from any rights enjoyed or obligations undertaken by Parties to this Convention under the 1961 Convention, the 1961 Convention as amended and the 1971 Convention.*

formulated in separate paragraphs¹¹². This was in fact a slight set-back for the rights of Indigenous People to licit use but, in practice, not problematic. There is another inclusion which has caused conflict and debate over the scope of the guarantee of licit use under this Article: the reference to the eradication of the plants containing narcotic and psychotropic substances, in the same paragraph as the reference to traditional licit use. The perspective of the commentary on the 1988 Convention illustrates that, when read in conjunction with Article 22 of the Single Convention, this provision is subject to some considerations, namely inter alia, that *the measures to be taken to prevent illicit cultivation and to eradicate the relevant plants must be judged... to take due account of traditional licit uses, where there is historic evidence of such use*¹¹³. It is problematic in so far as it apparently creates some legal uncertainty at the international level. Because Article 14 of the 1988 Convention is widely regarded (naturally mainly by those parties who desire it to do so, [the Plurinational State of] Bolivia and Peru) as establishing for the first time a sort of acceptance in an international treaty of traditional coca use. Therefore, they base their practice of the traditional habit on the provision included in paragraph 2¹¹⁴. But, in the view of an official UNODC and INCB perspective, the interpretation of the Bolivians and Peruvians concerning the genuine acceptance of traditional licit use is not in line with the Convention(s). In their belief, the provision has to be read in the way that only when eradication is performed, due account shall be taken to traditional licit use – in short, eradicate moderately. Particularly the INCB is quite explicit in its rejection of any traditional use and has voiced this policy on a number of occasions (annual reports)¹¹⁵. Additionally, due to this difference in the interpretation of the Article, discrepancies originated in the following on the national level, because (the Plurinational State of) Bolivia created, inter alia on the basis of Article 14(2), the Law 1008¹¹⁶, which defines legal, so called traditional, cultivation zones in the Yungas of La

¹¹²See The Commentary on The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances: 296.

¹¹³ Ibid.: 301.

¹¹⁴ Bolivia has (additionally to its interpretation of the Article as being pro traditional consumption) lodged a formal reservation when ratifying the Convention (see Metaal/ Jelsma et al. 2006: 7).

¹¹⁵ A more thorough discussion of the role of the INCB will be made in a subsequent part.

¹¹⁶ For a general analysis of the content of the Decreto Ley 1008 (Ley Del Regimen de la Coca y Sustancias Controladas) see, for example, the Commentary of this Law in the *InterAm* Database 1995. An interesting fact to be mentioned is that, during the negotiations of the Decreto Ley 1008, or better to say, previous to the establishment of this law, there have been efforts to establish a different law, named “Ley General de la Coca”. The underlying idea was to, for the first time, distinguish between the coca leaf and everything else (manufactured derivatives of it). The aspiration was to have two separate laws, one focusing on the coca leaf (Ley General de la Coca) and another one on the issue of the processing into cocaine and other derivatives, because of the complete difference in nature of the two substances. Due to political pressure of the U.S. the implementation did not take place in this form though (Interview Lessmann 11.2.2010).

Paz¹¹⁷. This development, in the words of an UNODC official, took place under the excuse of Article 14, but is definitely not in line with the international treaties, neither the one from 1961 nor from 1988 (Interview Pietschmann 25.3.2010).

A different opinion on the content and scope of the Article is voiced from outside of the UN, especially from non-governmental organisations. TNI for example underlines that the provision could in fact be an exception to the rule, but also sees its ambiguity and its inability to function in practice, again based on the contradictions originating out of the political practice of the INCB (see Metaal/ Jelsma et al. 2006: 6). In the supplement to its 1994 annual report the INCB for instance stated that:

Thus, mate de coca, which is considered harmless and legal in several countries in South America, is an illegal activity under the provisions of both the 1961 Convention and the 1988 Convention, though that was not the intention of the plenipotentiary conferences that adopted those conventions¹¹⁸.

As we can see, there exist certain disputes concerning the fact whether traditional licit use is contained in the 1988 Convention and hence enshrined in International Law or not. In this context, some have argued that the responsible monitoring body (INCB) follows a practice that gives more value to the Single Convention than to the 1988 Convention (see Lessmann 2009: 5).

In any case, the “watchdog”¹¹⁹ of the Conventions, the INCB, is permanently and explicitly denying any legal rights concerning traditional coca use and reminds the governments of Peru and (to a greater extent due to its stronger campaign in favour of coca use) Bolivia every year again, that what they do is substantially illegal. This attitude has not changed and has been dramatically offensive to the governments and the Indigenous People concerned. It does not take into account the argument of the Bolivian government, concerning Article 14(2) in the 1988 Convention (Interview Metaal 3.2.2010). Although the INCB has *de facto* no decision-making power it still represents a very dominant role in the field of international drug policy. Being established through the Single Convention, it looks back at a practice of shaping global drug debates since over approximately half a century and obviously has therefore substantial

¹¹⁷ And a the zone in transition in the Chapare region (see Lessmann 2009: 5).

¹¹⁸ Document E/INCB/1994/I/Supp.I:II, “Effectiveness of the international drug control treaties”.

¹¹⁹ In theory, the INCB is much like similar agencies which monitor the compliance to other UN treaties - the ultimate arbiter concerning the disputes between parties over UN conventions is the International Court of Justice (see TDPF 2009: 165).

power in this debate. Hence, it is important to briefly line out the main elements of its policy and perspective on traditional coca use and consumption.

Excuse: The role of the INCB in the context of global politics on traditional coca use and consumption

Before outlining, rather critically, the role of the INCB in the context of the topic of the coca leaf and the implications for traditional use of the Indigenous People of the Andes, it is important to clarify as well, that it is not my intention to argue for a non-existence of this monitoring-body. Clearly and undoubtedly, there are legitimate grounds for an authority to supervise and monitor international drug control, because not every substance existing on earth – naturally or fabricated – could possibly be freely trafficked and consumed without any control. The question is though, whether there is a legitimate basis, in line with a thorough investigation of the several aspects of the phenomenon (social, political, historical etc.), for a penalisation and control. Whether the situation is periodically reviewed concerning the best possible way of dealing with it, and whether there is enough independent, scientific reason in the first place, which confirms the specific control mechanism of a given substance, or not. The point is that if an international body in a continuously changing world is too obstinate to any kind of review or change it drives itself into a state of obsolescence. It is important to consider, whether that might be applicable to the INCB as well.

From a rather critical point of view, one might say in a few words, that the board members of the INCB are pretty obnoxious and that a lot of governments express doubts about what they do, say and represent. There is in fact a lot of discontent with the conventions and the INCB's position (Interview Youngers 9.3.2010). One of the main problematic points of the outline of the Board is that, whereas it is founded in the Single Convention that there have to be members with a medical, pharmaceutical or pharmacological background, there is no inclusion that there have to be members from a, for instance, law, anthropology, social science or ethnology background. Thus the composition generally lacks people coming from those fields¹²⁰. There is a very un-transparent process of the selection of the new members and among the last three new members for election there was, inter alia, one person, who is a well-known hardliner and anti harm reduction person. Although only being a side aspect, this

¹²⁰ Three members with medical, pharmacological or pharmaceutical experience are elected from a list of persons nominated by the World Health Organization (WHO) and 10 members are elected from a list of persons nominated by Governments (Art. 9 of the Single Convention).

policy serves as a good example for the way the INCB functions, as a dominance of rather conservative and hard-line members can result problematic, especially from a human rights perspective. The fact that the INCB is still mainly run by individuals who refuse an opening of the Board towards a more human-rights based approach represents what kind of profile the Board perpetuates - the hard-line, zero tolerance. In fact, INCB has even stated explicitly, that it will *not discuss human rights* (Kouame 2007) and *not engage in civil society* (Emafo 2007). This is obviously a quite extreme position, a fortiori because of the Board's relation to the UN. It is highly unlikely that any other monitoring body of the UN system would dare to be that clearly contra the human rights discussion.

In general, governments do listen very much to the INCB, they see it as the highest possible authority on the drug control issues and especially within the UN the powerful governments (like, i.e. the U.S.) back its annual reports (Interview Metaal 3.2.2010). With respect to the topic of coca, the INCB has definitely not shifted towards a more tolerating standpoint, which would acknowledge the multicultural characteristic of societies (in the Andean region), but to the contrary pursues the complete penalisation rhetoric proper to the time of origin of the board. If anything, the wording of their reports got more stringent and judgemental – which is probably also an opposing reaction to the recent efforts of the Bolivian government to open up the debate, in the international field, concerning de-classification and industrialization of coca and the abrogation of some treaty provisions. To underline my argumentation, I will cite some important phrases concerning traditional coca consumption of the more recent annual reports.

Like mentioned before, in 1994 the INCB for instance stated that mate de coca shall be regarded as an illegal activity (not in line with neither the Single Convention nor the 1988 Convention). In its annual report for 2006 the board mentioned the following developments in the region and its recommendations concerning them:

The Board notes that the Government of Bolivia is considering the introduction of a new drug control policy with a view to using coca leaf for a wide range of products, as evidenced by the inauguration in June 2006 of a plant for processing coca leaf. The plant will manufacture packed coca tea, for local consumption and, according to proposals, also for export to other States parties to the 1961 Convention... and urges the Governments concerned to ensure the full implementation of the provisions of the 1961 Convention as amended by the 1972 Protocol concerning the production of coca leaf, its industrial uses and international trade. The Board

*is concerned that that action could serve as a precedent and may send the wrong message to the public if it is allowed to stand*¹²¹.

The question arises, whether the production of coca flour and alike really sends out a *wrong message* concerning drug control?

In the same report, the INCB further *reminded* the governments of (the Plurinational State of) Bolivia and Peru, that their decisions concerning any aspect of coca cultivation, licensing etc. (in [the Plurinational State of] Bolivia it concerned the negotiations of two new laws which would have replaced the Ley 1008 and in Peru the consideration to decentralize the monopolistic coca agency, ENACO) have to be made in line with the Single Convention. Similar the wording in the annual report of the subsequent year:

*In December 2006, the Government of Bolivia, in line with its drug control strategy, opened one of the three plants envisaged for the production of coca leaf for industrial purposes. The Board notes with concern that the use of coca leaf for industrial purposes, such as the production of coca tea or flour, is in breach of the international drug control conventions. The Board reminds the Government of Bolivia and the Governments of the other countries concerned that the use and the importation of coca leaf, from which cocaine has not been extracted, for purposes other than those allowed under the 1961 Convention violates the provisions of the international drug control conventions*¹²².

Concerning Peru:

*In March 2007, the protests against coca bush eradication efforts led to a controversial agreement with the coca growers on a temporary suspension of eradication until the growers registered with the national coca enterprise. The Board is concerned that that development may lead to a further increase in the number of the registered coca leaf producers in the country*¹²³.

Further more, INCB addresses particularly the case of Bolivia, because the members of the Board undertook a mission to the country in September 2007, in order to review the situation in the country and the government's compliance with the drug control treaties. Regarding the coca leaf, the report reads as follows:

¹²¹ E/INCB/2006/1: 52.

¹²² E/INCB/2007/1: 68.

¹²³ Ibid.: 69.

The Board notes with concern, however, that the strategy addresses the issue of coca leaf chewing in a manner that is not in line with the obligations of Bolivia under the international drug control treaties, to which Bolivia is a party. The Board requests the Government of Bolivia to comply with its treaty obligations by taking measures to prohibit the sale, use and attempts to export coca leaf for purposes which are considered not in line with the international drug control treaties¹²⁴.

Further more, the board voices a certain demand in the report for 2008:

In 2008, the Government of Bolivia initiated a study on coca leaf in Bolivia, the objective of which is to produce quantitative and qualitative data on the use, marketing and production of coca leaf in the country.

...The Board hopes that the results of the study will assist the Governments of Bolivia and the other countries concerned in the implementation of the provisions of the 1961 Convention as amended by the 1972 Protocol, in particular the provisions on the production and use of coca leaf¹²⁵.

Thus, if we try to interpret this paragraph, there could arise the assumption that even if a study would contradict the content of the Single Convention, there is no chance of regarding the international treaty as a dynamic one, open to new and modern ways of interpretation.

One of the latest reaffirmations of INCB concerning the strict compliance with the provisions of the Single Convention was performed as a sort of political reaction to the official request of the Bolivian government to amend Article 49 of the 1961 Convention, concerning the abolishment of coca leaf chewing. INCB issued its opinion on this recent development as follows, restating in doing so its position on the issue:

The Board wishes to remind the Government that until such amendments are effected, all the uses of coca leaf considered by the Government as traditional, including coca-leaf chewing and the manufacture and consumption of coca tea, as well as all other products derived from the coca leaf of which alkaloids have not been removed, continue to be illicit activities under the terms of the Convention... In so far as coca leaf remains under international control, the Plurinational State of Bolivia... must ensure full compliance with its obligations under the

¹²⁴ Ibid.: 73f.

¹²⁵ E/INCB/2008/1: 74.

*Convention, including the obligation to eliminate all uses of coca leaf for purposes other than those provided for in the Convention.*¹²⁶.

Manifestly, there is a clear negation of any chance of discussion concerning the legal standing of traditional coca use. Even in-house representatives from the UNODC question the fact whether this decision is based on any logic, although they do not seem to question the decision and mandate of the INCB itself¹²⁷.

INCB's standing and viewpoint, calling for an elimination of traditional uses of coca, has understandably caused outrage in (the Plurinational State of) Bolivia¹²⁸. Paradoxically, these harsh international moral judgements came at a time when the Bolivian authorities displayed significant steps in meeting the parameters of international anti-drug obligations, under the premise of Morales' cooperative coca reduction strategy in the Chapare growing region¹²⁹ (see Ledebur and Youngers 2008: 1).

Also, the conflict between the point of view of the INCB members and the Bolivian government representatives does not seem to lack a certain notion of polemics. When the Bolivian president Evo Morales Ayma met the former INCB president Hamid Gohdse in a private get-together inside the Vienna International Centre in the course of the CND in 2009, he did not hide the coca leaves he carried with him. In reaction, the INCB president commented that he assumed that any alkaloids have been extracted from the there present leaves, because otherwise it would constitute an illegal and criminal act. Whereas the Bolivian president countered that he was considering appointing Mister Gohdse his personal advisor (Interview Lessmann 11.2.2010). Behind the scenes international politics do seem to have a certain scope of sarcasm.

¹²⁶ E/INCB/2009/1: 32f.

¹²⁷ This statement is a personal evaluation of the Interview with Pietschmann and several conversations with other UNODC staff members.

¹²⁸ Reactions from official Peruvian representatives have been genuinely less harsh than those from their Bolivian colleagues, still, the Peruvian government representative, at the CND meeting in 2008, has explicitly defended traditional coca as being an integral part of the customs and traditions of Peru and condemned INCB's rejection of it (see Ledebur and Youngers 2008: 3).

¹²⁹ The administration's policy *Coca Si, Cocaína No* is inter alia based on a reasonable and human rights respecting approach including cooperative measures between the official authorities and the *cocaleros* for reduction of the coca cultivation destined for illicit purpose (Interview Lessmann 11.2.2010).

4.3. Official requests from the Bolivian government concerning the conventions

The perspective of (the Plurinational State of) Bolivia on the coca plant in its natural form differs quite unequivocally from that of the dominant bodies concerning drugs control in the UN system, and also from some important, powerful global players in the field of international politics. The new constitution of the country¹³⁰ even includes a special section, Article 384, in Chapter VII on coca:

El Estado protege a la coca originaria y ancestral como patrimonio cultural, recurso natural renovable de la biodiversidad de Bolivia, y como factor de cohesión social; en su estado natural no es estupefaciente. La revalorización, producción, comercialización e industrialización se regirá mediante la ley¹³¹.

In the new constitution it was thus established that (the Plurinational State of) Bolivia officially regards the coca plant in its natural form as an element of cultural heritage. Moreover, it is clearly affirmed that, in its natural form, it is not a narcotic drug. Within this context, the Bolivian government did recently perform a worth-mentioning international political act concerning the Single Convention. On 12th of March 2009 the Bolivian president addressed a letter to the Secretary General of the United Nations, Mr. Ban Ki-moon, with the solicitation to abrogate Article 49, paragraphs 2(e) and 1(c), of the Single Convention¹³². In the letter, the Bolivian president inter alia points out, that there exists significant historic evidence of coca leaf chewing among the Indigenous People, also that the prohibition of this habit is wrong and emphasizes the fact that the custom is *one of the sociocultural practices and rituals of the Andean indigenous peoples... closely linked to our history and cultural identity*. He refers his arguments to various studies of well-known scholars, surrounding the discussion about whether coca is a harmful or harmless plant. Moreover he quite openly attacks the insufficient scientific background and tendency of stigmatization of the report of the Commission of Enquiry on the Coca Leaf. Having laid down his reasoning, he concludes the request of the Bolivian government in the following wording:

¹³⁰ The new Bolivian constitution was enacted in 2009; see the Political Database of the Americas 2009.

¹³¹ República de Bolivia, Constitución Política del Estado, 2009, Art. 384. Emphasis by the author.

¹³² E-Mail Statement by Mr. Milton Lozano Rocabado.

- (a) *That article 49, paragraph 1(c), of the Single Convention on Narcotic Drugs of 1961 be deleted, because the sociocultural practice of coca leaf chewing cannot be permitted temporarily as if it were doomed to disappear some day and as if it were an evil that should be permitted only for a transitional period: and*
- (b) *That article 49, paragraph 2(e), be deleted because it is a serious mistake to abolish coca leaf chewing within 25 years*¹³³.

According to the UN rules for further treating of the official request, the Secretary General communicated the contents of it to ECOSOC, including the reasons received from the Bolivian authorities. In line with the provisions established in Article 47 of the Single Convention, it is then the responsibility of the council to ask the parties whether they accept the proposed amendment and to submit any comments on the matter. If there are no rejections of the request within 18 months by any of the parties, the amendment would enter into force. If there are rejections, it is again within the responsibility of ECOSOC to consider a conference for the discussion of the topic¹³⁴.

In the opinion of the Bolivian government, the requested amendment to the Single Convention would not cause any change in International Law or domestic law of the states party to the Single Convention, nor would it provide any basis for the promotion or acceptance of completely uncontrolled coca cultivation. Moreover, the acceptance of the Bolivian request would not imply that all states are in favour of coca leaf chewing or those people who perform the practice, but that, in the countries where there is historic and continuous evidence, the continuity of the habit is permitted and secured and that the communities (the Indigenous People) are not being stigmatized and considered as criminals or violators of International Law. In the belief of the Bolivians, it would simply enable the country and other countries, which also regard the traditional custom as an essential element to their society, to securely maintain it¹³⁵.

Obviously, the request could in the future be of fundamental importance to Peru, and to a lesser extent to Colombia as well, with respect to the traditional consumption of the Indigenous People living in their territories. But, because Peru does not necessarily want to threaten Washington, they did not really back or support it, but so far kept rather silent on that matter (Interview Youngers 9.3.2010).

This act does not represent an official request for the de-classification of the coca leaf and has no consequence whatsoever for the availability or the legal rights to export natural coca

¹³³ E/2009/78: 6.

¹³⁴ See the procedures for amendments to the Single Convention are established under its Article 47.

¹³⁵ E-Mail Statement by Mr. Milton Lozano Rocabado.

products (leaves, trimate etc.). Essentially, it is only about the act of chewing and hence represents a rather symbolic yet significant action from the Bolivian government (Interview Metaal 3.2.2010).

Nonetheless, the reactions, particularly the one from the INCB (as we have seen above) have been quite clear-cut. The annual report subsequent to the request proved to use the political space of the board for an influencing of the other governments on the topic. Additionally, there has been certain confusion among the international community about what the Bolivian government is attempting with this official request¹³⁶.

Since the official request also represents a very open and explicit act in the field of international politics and thus put the whole coca debate high on the agenda, the reaction from the side of the INCB, like mentioned briefly above, has been sort of harsh. Because, *de facto*, although the INCB always persisted on its viewpoint that coca cultivation for traditional use and traditional consumption were not in line with the drug conventions, no state of the international community and not even UNODC or INCB had a problem with production for traditional use and traditional consumption prior to the recent developments. It was, in reality, not a big deal. But, that changed when Bolivian president Morales started to actively and loudly promote traditional licit use, and cultivation (through paroles like “one *cato* for everybody”) and even industrialization of coca products. As a result, the INCB apparently felt urged to voice its counterarguments more strongly from that time on (Interview Pietschmann 25.3.2010). Nonetheless, like noticed above, the request to abrogate the Article is really more of a symbolic relevance, as it would not imply any practical meaning to the world community. A different scenario would naturally create a declassification and decriminalization of the coca leaf, which would require the cancellation of the substance from the Schedule I List of the Single Convention. It would mean that the coca plant and its products would be freed for entering the international market, a hypothetical situation which has caused some uneasiness of various countries, which fear that once there has been a change of the Single Convention, it would open “Pandora’s box”¹³⁷ and the world would be flooded by coca and its derivatives (see Lessmann 2009: 6)¹³⁸.

¹³⁶ For instance, Germany apparently reacted sort of hysterically and thought that this was *the* big question - the declassification question, rather than the mere symbolic recognition of their chewing habits (Interview Metaal 3.2.2010).

¹³⁷ Particularly the U.S. has voiced serious concern about that fact. They fear that it would mount up to opening a Pandora’s Box of changes of the UN Conventions. But they have not been the only ones with that concern, also Colombia, Russia, Japan etc. are opposing any changes in UN drug conventions (Interview Youngers 9.3.2010).

¹³⁸ One of the counterarguments from TNI is in this context that it’s really hard to maintain that any changes in the scope of control on the leaf would lead to bigger and better organized cocaine trafficking, because it is working quite well at this very moment already. There is no problem to get cocaine anywhere around the world – thus could the situation really be worse? (Interview Metaal 3.2.2010).

4.4. On the possibility of reforming the UN drug control system – lack of flexibility?

Laws – and even the International Conventions – are not written in stone; they can be changed when the democratic will of nations wishes it¹³⁹.

The central question of this part will be whether this statement from UNODC can be said to be true, not only in theory, but also in practice. How much of a democratic will would be needed to change the content of the relevant conventions? And what are the existing obstacles concerning the matter?

When looking back at the development of international drug control, one might draw the conclusion that few barriers exist towards one direction: making the drug control system stricter and punitive and prohibitionist-oriented seemed to be not a too difficult task for the international community. Now, reforming the international drug control infrastructure towards a decriminalisation of certain aspects of its content does appear to include significantly more challenges. One of the most fundamental ones is surely reforming the UN system in a way that allows for increased flexibility without undermining the control system as a whole. In spite of the obstacles (they will be analysed below), even the former Executive Director of UNODC, Mr. Costa, acknowledged the *spirit of reform in the air*, the necessity to *adapt [the conventions] to a reality on the ground that is considerably different from the time they were drafted* and called for the commitment to base the needed reform on *empirical evidence and not ideology* (Costa 2008: 13). Also, already in the year 2001, the UK House of Commons Home Affairs Select Committee recommended to the government that it should initiate a discussion within the CND of alternative ways to tackle the worldwide drug dilemma – *including the possibility of legislation and regulation¹⁴⁰*. It is hence not only politically less powerful states like (the Plurinational State of) Bolivia but also representatives of so called global players, who decided to stop euphemising the actual situation but notice and see the inability and human rights violating nature of the current system as such.

The two principle options for nations who want to officially legalize drug use, notwithstanding the medical and scientific use, are on the one hand to seek for treaty revision

¹³⁹ UNODC World Drug Report 1997, Chapter 8: *The Regulation-Legalisation Debate*.

¹⁴⁰ Citation of the UK House of Commons Home Affairs Select Committee 2001 report, in TDPF 2009: 167.

or on the other to completely or partially withdraw from the current regime (see TDPF 2009: 176).

With respect to **treaty revision** there are two routes established in the respective conventions, either **modification** or **amendment**. Modification refers to an alteration in the regime of drug control through the re-scheduling of a drug – i.e. from one schedule list to another – of the 1961 and 1971 conventions or the tables of the 1988 Convention, or through a full cancellation (deletion) of a drug from a schedule or table. Amendment refers to an official alternation of one or more of the treaty provisions (see *ibid*: 176*f*).

The process for modification is established in Article 3 of the Single Convention, which allows the WHO or any state party to the Single Convention to initiate the process which can ultimately lead to a re-scheduling or deletion. But, in the case of coca (and also cannabis) a formal amendment to the Single Convention would additionally be required, given the fact that the plant is not only on the list for prohibited substances but the cultivation and production of it is separately and specifically prohibited as well¹⁴¹. A key problem, which renders the provisions concerning modification somehow rather academic than practical, is that individual states can easily block changes. Because although the WHO is a core agent due to its advisory function, it can only make non-binding recommendations, whereas the CND members (53) are in disposal of implementing changes of the treaty. And, within the CND there exist alliances of states which are vehemently against revisions which would lead the treaty away from its punitive character¹⁴². The issue is a morally characterized one, under the assumption that all supposedly illegal drug use is unacceptable. Cohen goes even so far to compare the extent that the conventions have assumed to a status usually more akin to religious documents (see Cohen 2003: 213*f*).

It can be said, that the composition of the CND itself renders a consensus on revisionist moves highly unlikely. Because even if there would be a move to a vote (which alone is rather implausible), the next step would require a majority decision in favour of the revision. Assuming – this quite utopian – scenario would take place, any state can subsequently request that the modification be referred to ECOSOC, whose decision is indeed final, but the procedure would have to undergo the same obstacles set up by the prohibitionist states (see TDPF 2009: 178).

¹⁴¹ See the relevant Articles (22, 26 for coca etc.) of the Single Convention.

¹⁴² The central hegemonic role within this alliance of states who seek to block treaty modification is in principle represented by the U.S. They played the driving force in the development of the treaties and thus are considered as the significant bulwark for them. Additionally they have established other forms of political pressure like, for instance, the certification system (see TDPF 2009: 178).

The second option for a treaty revision is the module of amendment. Initially, the prospects for this module seem more promising than for modification, although there is again a wide scope of action against it. The possibility of amendment is, like already discussed in the context of (the Plurinational State of) Bolivia's formal request, established under Article 47 of the Single Convention and Article 31 of the 1988 Convention. According to these Articles, countries party to the respective conventions can notify the Secretary General of a proposed amendment and give the reasoning behind the proposal. ECOSOC then can either call for a conference on the topic or ask the parties whether they accept or reject the proposed amendment. Hence, the process itself is less complicated, in theory, but it is in practice improbable that no state party would reject the proposal within the given time frame. And in the case of objections, like already discussed, ECOSOC subsequently can decide to launch a conference, which could usefully raise the profile of the revision issue. But there cannot be any certainty about the meaningfulness of such a revision, due to the fact that the conference could in principle as well even generate a complete opposite goal – i.e. a stricter prohibition rather than partial legalisation¹⁴³ (see *ibid*: 179).

If there is no way to achieve a desired convention revision through one of the review procedures, there exists another legal possibility for individual states, who wish to operate outside of the convention provisions. This would be the withdrawal from one of the treaties. There are again different options for such a withdrawal, which, although representing a very delicate political step in international relations, are in line with the treaties. Any state party to the conventions can opt out from them by depositing a formal denunciation with the Secretary General with reference to the reasons behind it. Even the termination of the Single Convention is technically possible (in accordance with Article 41), but incredibly unlikely, as it would require, at the moment, 143 individual state denunciations to achieve such a termination. Apart from the technical facts, a consideration or final decision towards an opting out of one of the conventions would naturally have severe political consequences for the state in question and provoke criticism from the prohibitionist orientated group. In international relations, it seems likely that the state would be regarded as a *pariah* “*narco-state*”¹⁴⁴, resulting in material repercussion like economic or financial aid-related sanctions¹⁴⁵ and

¹⁴³ This was *inter alia* the fact at the 1998 United Nations General Assembly Special Session on Drugs, where the initial effort was a reassessment of the established drug regime, and the final outcome a reaffirmation of it and its strategies, thus, an even deeper foundation instead of an opening-up (see TDPF 2009: footnote 131).

¹⁴⁴ This term was used by U.S. scholar Peter Andreas, cited in TDPF 2009: 181.

¹⁴⁵ To a certain extent, this is what happened in the context of Bolivian – U.S. political relations, when, according to their certification system, the U.S. authorities decided to withdraw and suspend the *Andean Trade Promotion and Drug Eradication Act* (ATPDEA) because the country's performance concerning drug eradication was not satisfactory in the opinion of the U.S. government - and Bolivia has expelled the DEA from

moral depreciation. Bewley-Taylor for example argues that for a better impact and less problematic international standing, it would be more advisable for a group of like-minded countries to seek a revision of a treaty collectively, combine their efforts for a denunciation process and hence potentially challenge the drug control system as a whole. In his opinion, the threat of such a combination of power and subsequent action might alone be enough for initiating a significant reform (see *ibid*: 181f.). But in fact, all these possibilities are either highly bureaucratic or implausible and utopian. What is more, they do not embrace the situation adequately in the context of the international control system of the coca plant. What is required for this context, is a different angle to the debate, namely a human rights-based perspective. In fact, the possibility of challenging the current drug control system (with special consideration of the coca issue) on the grounds of the caused human rights violations has already been actively discussed. Due to the fact that human rights are universal rights guaranteed for all human beings and solidly founded also within the UN system, they can, in theory, not be politicized or openly disregarded. As a matter of fact, it has already been portended, that if a constitutional court of a signatory nation to one of the conventions rules that the prohibition of a drug was contrary to the constitutional principle of the nation, there would be no binding to the limitations of the respective convention with regard to this prohibition any longer (see *ibid*: 184). A different possibility for a revision of the content of the conventions, also in the context of human rights, would be that if, for instance, the right of Indigenous People to sovereignty (self-determination) over their natural resources would become accredited as *ius cogens*, then all the other international provisions in conflict with it would become null and void¹⁴⁶.

As it has been demonstrated, coca products (in their natural, low potency, form) are situated in a sort of legal grey area and are subjects of continuous wrangling on their legal characteristics between the UN bodies responsible for drug control and the countries where coca is considered a traditional element of their traditional indigenous cultures (above all, [the Plurinational State of] Bolivia and Peru). The various products, including coca tea, flour,

its territory (see on the certification situation in general and the prospect for 2010, U.S. Department of State 2009).

¹⁴⁶ See the Vienna Convention on the Law of Treaties from 1969, Art. 53 for the definition of *ius cogens* and its significance in conflict with other treaties. A second Article of the same convention might be of importance with regard to the coca issue, namely Art. 62, which states, that all treaties can cease to be binding if a fundamental change of circumstances has taken place since the time of establishment of the treaty. This provision might be of relevance concerning the inadequate scientific background which gave grounds for an inclusion of the coca leaf in the schedule I list and the new scientific resources and studies proofing the harmlessness of the plant in its natural form. What would be necessary for such a re-thinking of the actual situation and status of the content of the, in this case, Single Convention is a meaningful data and analysis collection from an internationally accepted independent institution, able to provide the relevant powerful underlining for the cause of revision.

tooth paste and some traditional medicines are on the one side legally accepted and even promoted in countries like Peru (through the state's monopoly institution concerning coca, ENACO) and (the Plurinational State of) Bolivia, but on the other side rejected and stamped as illegal by the INCB, which is relying their argumentation on the provisions established through the Single Convention and the 1988 Convention, which both (the Plurinational State of) Bolivia and Peru have ratified and are thus bound to¹⁴⁷.

At the moment, four nations enshrined in their legislation some form of protection of traditional use of coca leaves, to different extents. While (the Plurinational State of) Bolivia and Peru allow the cultivation of coca leaves for traditional consumption under the limitation of a certain scale - currently still 12.000 ha in (the Plurinational State of) Bolivia and 9.000 tons annually in Peru (see Lasso 2006) – and Bolivia additionally has recently included the cultural heritage aspect of the coca plant in its new constitution, Colombia and Chile allow the carry of coca leaves for traditional use (chewing) for their Indigenous People. Argentina's national legislation also approved the same, without reference to the term Indigenous People (see TDPF 2009: 204).

But not only countries from the “producing hemisphere” show proactive thinking in the discussion about the legal standing of the coca leaf, even the European Parliament called on its member states to explore possible ways of *safe use* of coca based substances (see European Parliament 2009: 28).

As it is outlined above, the UN treaty system – concerning the drug conventions but assumably also in the context of other topics - has been established and constructed in such a way, that it is highly complicated to reform it in its fundamental structure. Powerful nations who had a powerful voice in the beginning of the drug control system and regime do, to a great degree, still occupy this same power and can thus attempt to block any changes contrary to their political aspirations. It was nonetheless necessary to outline the existing technical measures for treaty revision in order to provide with the full spectrum of the *de facto* drug control system. What is more, this lack of flexibility within the UN drug control regime makes it even more important to outline possible injustices and problematic elements. Even though there might be obstacles, the necessity of a reform should not be ignored if existent.

Summarizing, it is vital to stress the influence of the three international drug control conventions on the international and also national level. All of them have been very widely

¹⁴⁷ See the INCB reports of the last three years and TDPF 2009: 202.

ratified and thus governments rely their argumentation for and justify their punitive– and often human rights violating – activities and measures on the grounds of the conventions’ provisions. They moreover lack, in many cases, the implementation of the duty to fulfil and protect the human rights of people who are affected by the consequences of the worldwide *war on drugs*, involving inter alia the denial of harm reduction interventions to drug users, the destruction of the natural environment and thus of the livelihood of peasants and Indigenous People, an excessive use of force and the discrimination against already marginalized groups of society. Various concrete, and also shocking, human rights violations¹⁴⁸ show that the *war on drugs* has ruled over the premise of human rights for all, with the consequence that the criminalisation of drugs and people who use them (or are involved in their cultivation and production) has become the priority over protecting and promoting health (see BFDPP/ IHRA 2008: 4).

There are probably various legitimate perspectives which would serve for a discussion on the nature of the drug control provisions and mechanisms, whether they are justified in their present nature and whether they are in line with other international treaty provisions. One might particularly raise concern about the question if the means (of drug control) still can claim to achieve the end (a world free of harmful drugs, their consumption, trafficking etc.). In the focus of my study is the situation of human rights of Indigenous People in the Andean region, on the specific example of the coca plant (leaf), in the context of the outlined international drug control system. For an analysis of the (triangular) situation of the relation between the rights of Indigenous People, coca, and the drug control system it is therefore now crucial, in order to have both sides of the coin, to discuss the relevant international norms and instrument which establish and characterize the human rights of Indigenous People and outline the content and current debate of those norms.

¹⁴⁸ Take, for example, ongoing massive human rights violations against the Colombian people by military and paramilitary as well as guerrilla forces, killings in the course of the U.S.-backed counter drug efforts in Bolivia etc.

“Indigenous People”

5. The rights of Indigenous People in International Law under special focus of the human rights dimension

The last century has seen a gradually increasing number of events and developments regarding the presence of Indigenous People in International Law, both through the creation of formal international human rights law and the development of customary international law. Approximately in the 1970s, representatives of Indigenous People entered the sphere of development politics and international legal debates on a national as well as global scale.

They thus managed to open a new aspect in international politics and law: the division between Indigenous People and non-indigenous people and the inherent examination of the consequences of this division (see Rößler 2008: 54). The developments in the system of the United Nations with respect to the human rights of Indigenous People are strongly linked to processes of indigenous self-mobilisation and co-operation on the national and regional level, combined with a growing number of human rights work by indigenous and non-indigenous people or institutions¹⁴⁹ and civil activist groups in the field (see *ibid*: 65 – 68).

At the beginning of this Chapter, I will outline the developments that led to Indigenous People becoming subjects of International Law and then underline why the human rights based approach is the one best suited to the protection of the rights of Indigenous People to culture and tradition. Subsequently it will be essential to mention the most important human rights instruments as to their provisions on Indigenous People’s specific rights and particularly on their social, economic and cultural rights (i.e. right to culture, self-determination, tradition, religion...) and put those provisions in context with the international drug control regime outlined above. For reasons of space, I will unfortunately not be able to mention all the existing instruments - treaties, declarations, recommendations, reports, policies, court decisions etc. - that are of use for or which contain references and implications to Indigenous People, because in fact, fortunately, there exists already a very extensive sphere of those instruments in International Law. They serve nonetheless as the theoretic background for my work and thus probably influence the outline of the paper subconsciously¹⁵⁰. Moreover, also

¹⁴⁹ Among those institutions, the International Work Group for Indigenous Affairs (IWGIA) is one of the most important ones.

¹⁵⁰ For instance, one international treaty is highly relevant for the rights of Indigenous People but will not be discussed in my paper: The Convention on the Prevention and Punishment of the Crime of Genocide (1949). Also, the Convention against Torture and Other Inhuman, Cruel or Degrading Treatment or Punishment, CAT, (1984) would serve as an excellent basis for the discussion on human rights violation through the war on drugs –

for matters of space only, I will not discuss in detail indigenous land rights, a topic which has been thoroughly present in international legal debates and which has produced quite an ample amount of case law. In spite of the fact that land rights certainly are of high value and relevance for my discussion, they can be touched on as a subject in the realms of the right to self-determination, cultural heritage and the rights of Indigenous People to their own way of life, tradition and respective practices. For those aspects of economic, social and cultural rights they naturally are crucial and should be considered as an inherent part.

5.1. Preliminary considerations on the UN Human Rights System and its principles

In principle, the two UN systems in focus here – international drug control and human rights – present a very similar structure. Both of them have focused political bodies which are made up of member states of the UN. Both incorporated a consensual, treaty-based system, which is overseen and monitored by “independent”¹⁵¹ committees and both are supported by the UN Secretariat. Nonetheless, this should not let us make the conclusion that they are really similar in fact. The working methods which are adopted in both systems and the ideologies and principles they enshrine do in times show harsh disparities. Not only on a technical or ideological level does their respective nature differentiate, but also concerning their status in law. In opposition to the impression one gets when analysing the reality on the ground, the human rights provisions, as representing an overarching principle in International Law, *de iure* have a higher legal standing in the UN system and in so, in International Law (see BFDPP/ IHRA 2008: 23). *The Charter of the United Nations* (hereinafter the UN Charter) is the primary legal document of that entity, which lines out the principle organs and mandates of the UN and binds its Member States to certain principles and purposes which should be reflected and incorporated in all other UN instruments. Especially in a system like the UN, where the hierarchies between the numerous treaties and conventions are complex, and conflicts between international legal systems show to be highly technical and complicated, it

because in the course of the forced eradication policies of some countries and the respective destruction of coca fields and excessive use of force on the *cocalero* families there have been several incidents of human rights violations which could be analysed in the contexts of CAT. In spite of its relevance and also my personal interest I will not discuss CAT though, as I do not include individual case law in my paper but try to focus on the general debate on an international scope.

¹⁵¹ I highlighted the notion of independence, because I think especially in the case of this paper, it should always be underlined that it is a highly problematic term, and often not reflected in its full meaning in the reality of international politics.

is crucial to bear in mind, also for the present context, that there exists one instrument which has primacy in application¹⁵². Article 103 of the UN Charter states:

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligation under the present Charter shall prevail (Emphasis by the author).

The human rights treaties and the international drug control treaties are both to be considered as *other international agreements*, which, as bodies of law, gear towards achieving the purposes in line with the principles of the UN Charter (see BFDPP/ IHRA 2008: 21). In this context, the *protection of human rights* is explicitly and clearly stated in the purpose of the UN Charter; indeed, the term is mentioned seven times, from the Preamble¹⁵³, the purposes of the UN¹⁵⁴, to the responsibilities of the General Assembly¹⁵⁵ and ECOSOC¹⁵⁶.

However, the UN Charter does not mention drugs in any of its chapters, unlike its predecessor, the Covenant of the League of Nations, which specifically did so in its Article 23 (c). What is more, the General Assembly, the principle recommendation making body of the UN, explicitly stated in recent years that drug control measures, being a joint and shared responsibility, must be performed and carried out in full conformity with the UN Charter and its principles and purpose and with full respect for all human rights and fundamental freedoms¹⁵⁷. This statement shows a very clear and definite view on the character of the legal structure, which places human rights on a higher standing in the UN Charter, and therefore in the whole UN system.

In that sense, what are the main overarching principles which form the key fundament of the human rights treaties? Apart from the essential characteristics of human rights as being universal and inalienable, interdependent and indivisible¹⁵⁸, there are three essential principles, which are rooted in the UN Charter and the *Universal Declaration of Human*

¹⁵² See UN Doc A/CN.4/L.702, 18 July 2006, paragraphs 34-36.

¹⁵³ In the Preamble, the UN Charter states that the determination of the UN is *to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.*

¹⁵⁴ Arts.1 and 55 of the UN Charter.

¹⁵⁵ Art. 13 (1)(b) of the UN Charter.

¹⁵⁶ Art. 61 (2) of the UN Charter.

¹⁵⁷ See UNGA Res 61/183, paragraph 1.

¹⁵⁸ An exhaustive number of scholar works exists on the characteristics of human rights. See for example the respective webpage from UN human rights bodies (i.e. OHCHR, <http://www.ohchr.org/EN/Pages/WelcomePage.aspx>) or Nowak 2003: 35 – 39.

Rights: the **principle of non-discrimination**¹⁵⁹, the principle of **protecting the most vulnerable groups** of society and the principle of **empowerment**¹⁶⁰.

The principle of non-discrimination is established in all of the human rights treaties¹⁶¹ and creates for the states parties two obligations, which are distinct but interlinked. One is the negative obligation to not discriminate against groups or individuals on a variety of clearly mentioned grounds – like i.e. race, colour, sex or religion. The other is the positive obligation to take special protection measures in order to diminish or eliminate conditions that amount to discrimination of certain groups or individuals¹⁶².

The second principle is the protection of the most vulnerable groups of society, obviously closely linked to the first principle. It is reflected throughout the entire UN human rights treaty system, with some instruments explicitly aiming at the establishment of mechanisms to fulfil the principle as such: the provision of special and extra protection to vulnerable groups, like children, women, racial minorities, migrant workers and Indigenous People (see BFDPP/ IHRA 2008: 21).

The third principle, again in relation to the others, is the principle of empowerment, which combines various specific key aspects of the human rights based approach of International Law. It is reflected in the right to self-determination of peoples¹⁶³, the right to freedom of expression¹⁶⁴, religion¹⁶⁵, the right to political participation¹⁶⁶, the right of a child to be heard¹⁶⁷ and, most importantly for the present topic, the right to engage in cultural activities¹⁶⁸. In the context of this principle, the participation and involvement of the civil society in national, regional and international governance matters is crucial for the full enjoyment of those rights. Additionally, the right to be consulted and the right to be listened to¹⁶⁹ are of particular importance for the present topic.

¹⁵⁹ See *ibid.*

¹⁶⁰ I base this categorization on the structuring done in the report of The Beckley Foundation Drug Policy Programme, 2008.

¹⁶¹ See for instance, Convention on the Rights of the Child (CRC), Art. 2; ICCPR 2(1) and ICESCR 2(2) and the two Conventions directly focusing on the topic of discrimination: the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Elimination of Discrimination Against Women (CEDAW).

¹⁶² See for example HRI/GEN/1/rev.6; UN Doc CRC/GC/2003/5: 4 and E/C.12/GC/19: 31.

¹⁶³ Art. 1 ICCPR and ICESCR, Art.55 UN Charter etc.

¹⁶⁴ Art. 19 ICCPR,

¹⁶⁵ Art. 18 ICCPR, Arts. 1, 5 and 6 of UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief; Arts. 1, 14 and 55 of the UN Charter; Art. 13 CRC etc.

¹⁶⁶ Art. 25 ICCPR.

¹⁶⁷ Art. 12 of CRC and CRC/C/GC/12.

¹⁶⁸ Art. 15 of ICESCR; Art. 31 CRC; and more exhaustively on the right to culture: Arts. 8, 11, 15 and 31 of the Declaration on the Rights of Indigenous People (UNDRIP) etc.

¹⁶⁹ Arts. 18 and 19 of UNDRIP.

Despite of these negative and positive obligations of states towards the people living in their territories, examples of disproportionate criminal actions and use of force against Indigenous People and ethno-racial minorities are all too common in the context of drug control mechanisms and drive those affected even deeper into a situation of poverty. Moreover, local peasant communities, *cocaleros* and other farmers in the – mostly – developing regions carry the major burden of the supply-side control efforts (eradication activities, criminal sanctions, arbitrary detention etc.)¹⁷⁰. And from an international law and politics perspective, it is striking that, while in most other realms of the UN civil society engagement and the consultation and involvement of affected groups and communities is performed in line with the UN human rights principles, in the drug control system this phenomenon is hardly present and initiatives in that context lack far behind. And what is worse, none of the three mentioned principles is neither established nor reflected or evident in the three drug conventions¹⁷¹. In the words of a leading initiative working in the field of drug politics, the situation presents a result which has a *set of conventions that significantly affect people's live yet lack a human face* (BFDPP/ IHRA 2008: 21).

5.2. Brief historiography: Indigenous People becoming subjects of International Law

Indigenous People all over the world face serious challenges when it comes to their right to perform cultural and traditional practices and continue with their own ways of life. They are in a position today, where their habits and customs have tried to be destroyed and assimilated to foreign, dominating, cultures. Far too often, the members of the communities have been disdained, discriminated against and disrespected in the past for their way of being – in cultural, religious and traditional terms – and unfortunately this phenomenon is still present today. Indeed, it is even reflected and enshrined in the area of International Law.

The rights of Indigenous People have been part of the general discussion on the guarantee of human rights in universal, international, regional as well as national legislation. There exist various international treaties which cover rights specifically relevant to the Indigenous People of the world and others which explicitly have Indigenous People in the core of their focus, like inter alia, the International Labour Organisation Convention 169, the Convention concerning Indigenous and Tribal Peoples in Independent Countries (hereinafter ILO

¹⁷⁰ See for instance the Statement of the Andean Coca Producers 1998.

¹⁷¹ It is often voiced that the 1988 Conventions does to some extent consider human rights based measures (in Art. 14 (2)) but as it has been outlined in the previous chapter, the official opinion in that context is less promising than some interpretations made by countries in Latin America would suggest.

Convention 169)¹⁷² and the United Nations Declaration on the Rights of Indigenous Peoples (hereinafter UNDRIP).

Within the respective national and international legal systems, the rights of Indigenous People mostly fall under the scope of minority protection laws, although in recent years there has been a slight shift in this context towards recognition of Indigenous People for what they really are and consider themselves to be: *peoples*, in the full meaning of the term. They do not see themselves merely as minorities within a nation as in contrast to the majority, but as peoples, as laid down in Article 1 (1) of both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR):

All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

However, when an international or regional treaty lacks specific provisions on *Indigenous People*, the term *minority*, as it is employed in inter alia the Article 27 of ICCPR, takes on a different and more important role. It should also be remembered that although *peoples* certainly is not the same like minorities, the two subjects are not mutually exclusive. Minorities in one state can be majorities in another (for instance, Slovenian minority in Austria) and thus have some sort of protection from the state in which they represent the majority. Indigenous People have a completely different standing in that context and usually can not rely on the protection or enforcement of their rights by any other nation, but if at all, by other Indigenous People¹⁷³.

The term **minority rights** is genuinely a heterogeneous category, but all aspects of it usually share two important features: they go beyond the notion of common civil and political rights of the individual, which are protected in liberal democratic societies; and they are established with the aspiration of recognizing and accommodating the distinct needs and identities of groups which do not form part of majority within a given society (see Kymlicka/ Norman 2000: 2). These aspects of minority rights are to a certain extent also true for the notion of the

¹⁷² The Convention was adopted 27th of June 1989 and entered into force 5th of September 1991.

¹⁷³ The International Working Group on Indigenous Affairs, the Council of Indigenous People, The Indigenous Dialogues Foundation, The Unrepresented Nations and Peoples Organization (UNPO), the Indigenous Environmental Network but also regional institutions like the Arctic Council and the Andean Coordinator of Indigenous Organizations (CAOI) are examples of possible ways of how Indigenous People merged and combined their efforts, co-operating on several issues which are often of interest for all of them.

rights of Indigenous People, but - as remarked earlier - their notion goes essentially further. Because, referring to the fact that Indigenous People claim for themselves to be *peoples* in the sense of its content in International Law (Art. 1 of ICCPR), their rights are inseparable and interdependent with the concept of **self-determination**, which is *a principle of the highest order within the contemporary international system* and without which *no discussion of indigenous peoples' rights under international law is complete* (Anaya 2004: 97).

The two UN Covenants on Human Rights – ICCPR and ICESCR

The International Covenant on Civil and Political Rights (ICCPR, 1966) and the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) are the two main human rights instruments in the international field. Indigenous People are not explicitly mentioned in any of the Articles of the Covenants, but some of their collective (in contrast to classical individual) rights have been regarded as covered under the guarantee of specific human rights provisions for minorities and additionally, and that is of high importance nowadays, scholars have more and more interpreted or postulated *Indigenous People* as not being a minority within a state but a *people* in the common sense of Article 1 of both ICCPR and ICESCR, which *de facto* grants them quite a high degree of self-determination¹⁷⁴. The Articles read as follows:

1. *All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*
2. *All people may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.*

(Articles 1 of ICCPR and ICESCR)

¹⁷⁴ For example, The Draft Nordic Sami Rights Convention states in Article 3 that “As a people, the Saami has the right of self-determination in the accordance with the rules and provisions of international law and of this Convention.” Even if the treaty can not be regarded as an international treaty because it is still in the status of a Draft, it voices the current beliefs of high experts from the international law field on the situation of the Sami people and can thus be seen as a path breaking instrument in the general debate on indigenous rights. See, for this discussion, for example: Scheinin 2008: 167f.

ICCPR also covers like mentioned above, special minority rights provisions. Article 27 of the Covenant is of fundamental importance and relevance to Indigenous People insofar as it protects individuals belonging to a minority to:

...not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

(Art. 27 ICCPR)

In the General Comment No. 23 on Article 27 of the convention, issued by the Office of the High Commissioner for Human Rights, it is stated explicitly though that the ICCPR draws a distinction between the right to self-determination and the rights protected under Article 27. The right to self-determination under Article 1 is expressed to be a right belonging to *peoples*, but Article 27 relates to rights conferred on *individuals* as such. The Comment further underlines that, one or more of the rights issued to individuals under Article 27 (i.e. to enjoy a particular culture, livelihood etc.) may consist in a way of life which is closely associated with the inhabited territory and the use of its resources. This, in consequence, may especially be of importance for members of *indigenous communities constituting a minority* (see HRC General Comment No. 23).

It is of importance to notice as well, that the Article refers to states in which such minorities exist and although it is in principle a treaty which technically can apply to all countries of the world, the wording makes clear that minority protection is only relevant in those states where minorities exist. But, coevally, the content of the term minority is not defined and that means that it is up to the states themselves to decide whether they have minorities within their state territories or not. Thus, even after the ratification of the ICCPR the Indigenous People living in the state party to the treaty, can not be certain to get the necessary protection of their rights and liberties (see Kuppe 1998: 128).

ILO Convention 169

One of the most important instruments regarding the specific rights of Indigenous People is the ILO Convention 169¹⁷⁵. It is the only legally binding international treaty so far focusing exclusively on Indigenous People. The underlying principle of the treaty, which was mainly established due to a very active mobilisation of the various indigenous communities, is that it is fundamental to grant special social, economic and political rights to those people in order to secure their existence as an independent ethnic group and the persistence of their specific culture and tradition (see Kuppe 2006: 83). The ILO Convention 169 represents for the Indigenous People a highly important legal instrument, as it has one of its focus on the right to land, accession of land and landownership of Indigenous People. The land rights provisions are of paramount importance to them as they represent the basis of their existence. They are covered in Part II of the treaty (Articles 13-19 of the ILO Convention 169). And although only 20 States have ratified the Convention so far, Indigenous People¹⁷⁶ have effectively proclaimed their rights (especially land rights) in relying on its provisions. The convention definitely has opened the discourse about the requirement of new legal framework conditions for Indigenous People of the region and induced some legal reforms on the national level, mainly in Latin America (see *ibid*: 84).

Excuse: The notion of Indigenous People

For the definition of the term and notion of Indigenous People two instruments in the international sphere are of crucial interest, because they are the only two existent ones which outline the respective characteristics. This is on the one hand the ILO Convention 169 and on the other the recently adopted UN Declaration on the Rights of Indigenous Peoples, although only ILO Convention 169 does include a clear definition of the qualification as *indigenous* in its Article 1 (1b):

Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their social, economic, cultural and political institutions.

¹⁷⁵ The ILO Convention 169 is the successor of ILO Convention 107 – Concerning the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries. Due to space limits I will not go into detail on ILO Convention 107.

¹⁷⁶ Mainly from Latin America, where most of the countries who ratified the Convention are located. For the status of ratification see URL: <http://www.ilo.org/ilolex/english/convdisp1.htm>.

And Article 1 (2):

Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

Scheinin elaborates a schema with five central characteristics of Indigenous People out of the provisions in the ILO Convention 169 and the Declaration, which shall be outlined below¹⁷⁷:

- 1) *Being first*: Indigenousness refers to the historic fact of being *prior to other human communities* and specifically, *prior to the current dominant population*. Being first hence relates to the presence of a culture in a certain territory, which has been prior to other cultures and shows continuity down to the present day, to the human beings that live in and constitute cultural communities today.
- 2) *Subordination/Lack of political control*: Indigenousness refers to the current dominant population, as it can be said that Indigenous People are in a *minority situation* in relation to them, even so if they happen to be the majority in terms of numbers. This characteristic is particularly evident throughout the whole ILO Convention 169, being a treaty which sets out obligations of the states in respect to Indigenous People living in their territories, presuming that they are not the ones who are in power of governance in the state.
- 3) *Distinctiveness*: In the sense of *being different* and *wanting to be different*¹⁷⁸. This characteristic is obviously related to the self-identification of people as *indigenous*. Forms of manifestation of distinctiveness can be social, economic, cultural or political practices and traditional habits as well as ways of life. To a certain extent, the protection of the specific rights of Indigenous People reflects the acknowledgement of the cultural diversity of humankind as an end in itself – and its continuity and transmission to the future generations.
- 4) *Cultural continuity*: This characteristic draws a line between the historic situation of *being first* and the right to the present and the future. In focus is the continuity of some different, distinctive, social, economic, cultural and political features, which in the following give Indigenous People the right to the past, to the present and to the future¹⁷⁹.

¹⁷⁷ See for this schema of classification Scheinin 2008: 155 – 157 and Scheinin in Ghanea/Xanthaki 2005: 3 f.

¹⁷⁸ See UN Declaration on the Rights of Indigenous Peoples, Preamble; emphasis by the author.

¹⁷⁹ Scheinin associates the articulation of Indigenous People's right to this three time scales and sets them in relation to the characteristics of the notion of indigenousness (see Scheinin 2008: 158 – 164).

- 5) *Self-identification*: as cited above, Article 1 (2) of the ILO Convention 169 represents a fundamental criterion for the determination of groups to which the convention (and other international instruments on Indigenous People) applies¹⁸⁰.

Additionally, within the UN framework of human rights and Indigenous People, one of the most prevalent definitions is the “working definition” formulated by the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, *José Martínez Cobo* in his study on the *Problem of Discrimination against Indigenous Populations* (1986). The working definition reads as follows:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies (1) that developed on their territories (6), consider themselves distinct (3) from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society (2) and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system (4). This historical continuity may consist of the continuation, for an extended period reaching into the present of one or more of the following factors: ...

c. Culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, lifestyle, etc.)¹⁸¹.

Multiculturalism has increasingly become a crucial topic in International Law, which is in consequence asked to provide directions on the issue. Indigenous rights have in this context been instrumental, because they highlight the importance of respect for cultural diversity, protection of identity and respective legal pluralism (see Xanthaki 2010: 1).

The right to one’s own culture, the right of this culture being distinct to other cultures and the relationship and interlinked characteristic of Indigenous People’s “use” of land to other

¹⁸⁰ There is de facto a sixth category, which refers to Indigenous People’s special relationship to their territory, lands and natural resources. They constitute essential elements in the history, culture and identity of the communities and hence represent a special importance for the cultural, religious and spiritual values of the Indigenous People (see Scheinin 2008: footnote 16).

¹⁸¹ Martínez Cobo 1986, cited in IWGIA and PFII/2004/WS.1/3; emphasis made by the author. The Working Definition by Martínez Cobo is widely accepted as a useful tool for the definition of the beneficiaries of indigenous rights, also by Indigenous People who have stated that a definition as such is not necessary, but that self-identification of indigenous individuals should be the primary consideration in that aspect (see Daes 1996: 12).

notions like social community, tradition, politics, religion and culture are hence reflected in the very essence of being *indigenous*.

5.2.1. The concept and right of self-determination and its particular relevance for Indigenous People in International Law

Self-determination, as a principle and as a right, has been one of the most vigorously debated and discussed collective rights in modern International Law and forms part of the group of rights which are to a certain extent centred around the protection of the existence and cultural as well as political continuity of groups, communities and peoples (see Crawford 1988: 57 f.). The right to self-determination represents a concept of liberation, which has long been *one of which poets have sung and for which patriots have been ready to lay down their lives* (Humphrey 1984: 193). It is a concept generated in the transformation of political geography: Empires have been replaced by States (see Thornberry 1989: 867 f.), and in most cases, foreign oppression has been replaced by local oppression. The doctrine of self-determination has certainly been present in international relations since the American and French revolutions. They demonstrated two aspects of self-determination, which have since not been radically changed: external and internal self-determination. The first involves, frankly put, casting off alien rule, the latter aims at putting the people in the centre of ultimate authority within the borders of one State (see *ibid*: 869). On the long run, the widening of the domain of global authority led to two effects on national self-determination: traditional rights of some states have been fettered, where before they have been protected by the concept of sovereignty of each nation state, and the rights of some oppressed nations have been (at least fractionally) recognized by the global community (see Doyle 2002: 67). Regarding the definition, S. James Anaya interprets the international norm to be rooted in core values like freedom and equality and to be within the sphere of human rights, as opposed to sovereign rights, entitled to individuals and groups (see Anaya 1993: 133).

The legal cornerstone for the peoples' *right* to self-determination was set, like already mentioned briefly above, through the establishment of the ICCPR and the ICESCR¹⁸². These two covenants were the first to anchor the right to self-determination in positive International

¹⁸² see GA Resolution 2200A (XXI), 1966. The principle of self-determination, as discussed, was of course established earlier, through the UN Charter.

Law (see Thornberry 1989: 871). In the course of their birth, the *principle* was upgraded to the *right of all peoples*¹⁸³. Various Articles in both instruments directly or indirectly *guarantee* the right to self-determination to all peoples¹⁸⁴. An interesting element is the juxtaposition of the right of self-determination (Article 1) and the rights of minorities (Article 27) of ICCPR, which enabled scholars to compare what International Law offers to *peoples* and what to *minorities*. What is crucial in this context is that, Article 27 is formulated in a way (*people belonging to such minorities* and *In those States... in which minorities exist*) that firstly, it does not grant a minority an unequivocal collective right, but only the persons belonging to them and secondly, many States have accordingly followed the rhetoric lead to deny that minorities would exist within their boundaries (see Thornberry 1989: 881). Moreover, the *Vienna Declaration and Programme of Action* (adopted by the World Conference on Human Rights in 1993)¹⁸⁵ expressly recognizes the right to self-determination as a fundamental human right. It is stated that self-determination forms a natural part of the international protection system of human rights and that it is universal in its nature (see Åhrén, Scheinin and Henriksen 2007: 58). The Declaration represents a political affirmation or consensus of the international community and insofar can be regarded as emerging international law (see Hannikainen 1996: 21).

Undoubtedly, for the Indigenous People the right to self-determination is the cornerstone of their legal interests in International Law, as it represents an overarching principle *and* right which contains a number of other rights of vital interest to them. In this regard, over the recent years they have repeatedly articulated the question why this crucial right should only apply to people in the meaning of nations forming a sovereign state vis-à-vis other sovereign states (in line with the positivist notion of the right) and not also to people within states as well (i.e. Indigenous People). But despite of several advancements in the treatment of Indigenous People in International Law with respect to human rights over the last decades, their claim to the right to self-determination represents one of the biggest remaining conceptual difficulties (see Ghanea/ Xanthaki 2005: 58). Some scholars even argue that the discussion on the norm of self-determination has been a *conceptual morass* (Kingsbury 2002: 216) in International Law, due to the fact that the concept and right itself is not adequately defined or formulated,

¹⁸³ see Art. 1 of ICCPR and ICESCR, respectively.

¹⁸⁴ A thorough analysis of all the relevant Articles can not be performed within this Essay. The most important ones for the right of self-determination are, of course, Art. 1 of both Covenants, Arts. 27 of ICCPR (minority rights) and 25 (taking part in the conduct of public affairs).

¹⁸⁵ Vienna Declaration and Programme of Action in URL: <http://www.unhchr.ch/huridocda/huridoca.nsf/%28symbol%29/a.conf.157.23.en>.

that it interferes with other principles such as territorial integrity¹⁸⁶, and partly also because of the fact that in practical reality the notion of self-determination can not fully come up to some of the established textual formulations (see *ibid*: 217). These shortfalls or obstacles are surely of fundamental relevance, but they do not impede the notion of self-determination from its importance to Indigenous People, due to its possibility of acting as a panacea in the fight for a guaranteed and protected co-existence of culturally, traditionally and religiously (marginalised) groups or societies, with distinct histories, living within the boundaries of a given state.

As mentioned above, the enjoyment of the right to self-determination is deeply linked to the condition of being defined and acknowledged as *peoples* in International Law, particularly even so in the case of a full blown right to self-determination, which is however not primary subject-matter of the discussion of Indigenous People's right to self-determination¹⁸⁷. S.

James Anaya precisely explains Indigenous People's status as *peoples*:

Indigenous peoples, nations, or communities are culturally distinctive groups that find themselves engulfed by settler societies born of the forces of empire and conquest. [...] Furthermore, they are peoples to the extent they comprise distinct communities with a continuity of existence and identity that links them to the communities, tribes, or nations of their ancestral past (Anaya 2004: 3, emphasis by the author).

He goes on underlining the genuine argumentation (based on an historical genesis) of indigenous rights activists and scholars in the field for advocacy of the status of Indigenous People as *peoples*:

Advocates for indigenous peoples point to a history in which "original" sovereignty of indigenous communities over defined territories has been illegitimately taken from them or suppressed.

During the positivist era of International Law the system was rather rigid, concerning the actors in power of the right to self-determination, exclusively sovereign states. Over the

¹⁸⁶ See on this discussion for instance: Brilmayer 1991: pp. 177 – 202.

¹⁸⁷ The right to self-determination in relation to Indigenous People commonly grants them in International Law the right to internal self-determination, which means in theory, determining their future within the existing nation-state boundaries and not the right to secession (full-blown right to self-determination) from the state they live in (see Koivurova/Heinämäki 2006: 103). Nonetheless, it has been argued that the participation of Indigenous People in international negotiations – as this practice becomes frequently more important in the international policy field – can be regarded as an external element of the right to self-determination (see Henriksen 2001: 10).

course of time, International Law opened up though and made way for the participation of non-state actors, who increasingly also became holders of certain group and collective rights (see Anaya 2004: 50). Still, states are up to the present day highly sceptical and reluctant when it comes to granting Indigenous People with a degree of autonomy and self-governance – or other forms of self-determination – in fear they would lose their sphere of influence and political power as a sovereign. This, despite of the fact that for most Indigenous People of the world the notion of self-determination does not contain the aspiration to establish an own nation state (secession), but represents the primary effort to control their traditional lands and natural resources (see Scheinin 2008: 163)¹⁸⁸. The assumption that the only way of fulfilment of the full right to self-determination is the formation of a new and separate state is hence in principle a misconception of the actual situation. The right to self-determination as a principle and concept of human rights does *de facto* not ascertain the specific measures of implementation of this right, because these are dependent on the respective context in question (country, peoples/beneficiaries, breach of self-determination etc.), but rather represents a substance containing several distinct but related possibilities for realization (see Anaya 2004: 104 *f.*). Particularly in the context of the right of Indigenous People to self-determination the Human Rights Committee has repeatedly accentuated the importance of Article 1 (2) of the ICCPR¹⁸⁹, the so-called economic and resource dimension of the right of self-determination (see Scheinin 2008: 163).

The principle and right to self-determination has also been at the heart of the drafting process for UNDRIP, with strong efforts made by the representatives of indigenous groups to ensure and enforce their position in this aspect: the international community (via UNDRIP, for instance) has to acknowledge and recognize the full right to self-determination of Indigenous People (see ILA Committee 2010: 10). It has also been argued that the indigenous rights presented in UNDRIP are to be seen as a further development of the right of self-determination and that hence, the human rights envisaged in the document are the same human rights recognized to the rest of all people - the difference being that there has so far not been any present reason to create a treaty or other instrument on the rights of non-indigenous people (see Clavero 2009b: 5, 7).

¹⁸⁸ In similar words, compare to Anaya: *indigenous peoples generally have evoked “a right to self determination” as an expression of their desire to continue as distinct communities free from oppression, while in virtually all instances denying aspirations to independent statehood* (Anaya 2004: 60).

¹⁸⁹ *All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.*

5.3. Fundamental International Instruments regarding the Human Rights of Indigenous People, with special consideration of their Cultural, Traditional and Identity Rights

Cultural rights, I believe, are pivotal to the recognition and respect of human dignity: they protect the rights of each person – individually, in community with others, and as groups -- to develop and express their humanity, world visions, meanings assigned to life and understanding of development. They encompass important freedoms connected to identity ... [t]hey are essential tools for development, for peace and the eradication of poverty, for building social cohesion, mutual respect and understanding between individuals and group (Shaheed 2010).

In the course of time, the assumption of states being a homogeneous entity, with a dichotomy between the state and its citizens, was more and more displaced by a new ideological system of the state as a heterogeneous space with distinct cultural groups and beliefs. As a consequence, the member states of the UN are also to be seen as heterogeneous societies and different groups of *people*, who show cultural specifications and thus need a certain degree of autonomy in some aspects of social, political and cultural life. Therefore, it is a necessity for the marginalized or non-dominant peoples to show that they are holders of a *distinct, different culture*, because this demonstration represents the headstone for their political and legal claims, nationally and internationally (see Rößler 2008: 95 f.). The third dimension (or generation) of human rights finally explicitly establishes the collective right of a community and a people to be culturally and traditionally distinct from other groups in society. Again, self-determination is in this aspect the major keyword.

5.3.1. The Right to Culture in International Law - a brief overview of its content in the major Human Rights Instruments

Historically, the right to one's own culture, one's own daily (cultural) routine, the preferred ways of life, religious practices or traditional habits and other cultural expressions have frequently been taken for granted by those who never had to worry about the protection of and respect for these rights, by those who form part of the dominant culture in a given society. As a consequence one might say, that reflections or considerations of the situation of other, non-

dominant, groups in society did either not take place at all or had too little of a voice to be heard in the first place. What is more, the subjugator's way of life was imposed on the marginalized and dominated – distinct – cultures (see ILA Committee 2010: 4). Fortunately, this changed with the course of time. The fact that the free enjoyment of the rights was not secured for everybody got more prominent on the international political agenda and voices from representatives of the minority groups or others in favour of them got louder and more powerful. Now, the right to one's own culture is affirmed as a right which belongs to everybody – in various international treaties and agreements, and in the case of Indigenous People particularly due to the adoption of UNDRIP in 2007. The right to culture, amongst others (self-determination, land rights, education and treaty obligations of others), forms part of the five basic claims of Indigenous People which arose out of the historic conditions of discrimination, domination, forced assimilation and other human rights violations on them: they should have the right to practice their traditions and celebrate their culture and spirituality with all its implications (see Wiessner 1999: 98 f.). The right to culture is naturally closely linked to the right to self-determination, and both form a potential foundation for all indigenous rights and represent a capacity to push states as well as the international community to redefine the way in which those rights are respected, protected and implemented (see Clavero 2009: 349).

Core provisions are for instance Article 27(1) of the Universal Declaration of Human Rights: *Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits* and Article 15 of the ICESCR:

The States Parties to the present Covenant recognize the right of everyone:

(a) *To take part in cultural life.*

Also, Article 5 (e)(vi) of ICERD establishes the states' obligation to prohibit and eliminate all forms of racial discrimination and to guarantee without distinction the right of everybody *to equal participation in cultural activities.*

Due regard to the specific rights of children to *participate fully in cultural rights and the arts* and the respective states' obligations to promotion and protection of that provision is also given in Article 31 of the CRC¹⁹⁰.

¹⁹⁰ See CRC 1989: Art. 31.

One of the most important international treaties in the realm of human rights of Indigenous People, like mentioned already, is the ILO Convention 169 and certainly, it also covers indigenous cultural rights. Article 2 (2b) creates the duty of governments to assume the responsibility for the development of measures which, inter alia, shall promote the *full realisation of the social, economic and cultural rights of these peoples [peoples concerned] with respect for their social and cultural identity, their customs and traditions and their institutions* and Article 4 provides that special measures should be taken to protect the cultures of Indigenous People¹⁹¹.

Moreover, the Human Rights Committee in its General Comment No. 23 on the rights of minorities (Art. 27 of ICCPR) stated that:

*With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them*¹⁹².

Although the emphasis made in this statement obviously does not directly refer to the present topic, it is still crucial to consider these special provisions granted to Indigenous People (minority communities). Because of the fact that the Human Rights Committee acknowledges the requirement of special protection mechanism in order to guarantee the cultural well-being and continuity of a people, it sets an important standard in International Law. Hunting and fishing have certainly been problematic issues in international and domestic legal debates – particularly when it comes to special conditions for Indigenous People to whale fishing or reindeer hunting¹⁹³ etc. – and it is my personal assumption that this should be bared in mind for the discussion of possible international special provisions of legal coca use of Indigenous People.

¹⁹¹ ILO Convention 169 1989: Art. 2 (2b) and 4, emphasis and addition by the author.

¹⁹² CCPR/C/21/Rev.1/Add.5: paragraph 7, emphasis by the author. The Human Rights Committee relies its construction of Art. 27 ICCPR in this paragraph inter alia on famous human rights cases like Bernard Ominyak, Chief of the Lubicon Lake Band v. Canada and Kitok vs. Sweden.

¹⁹³ See for instance the cases mentioned above.

Finally, the Declaration on the Right to Development (1986) affirms in Article 1 that all peoples are *entitled to participate in cultural development* and links the right to development with the full realization of self-determination. The Draft Declaration of Principles on Human Rights and the Environment (1994) includes two Articles which are of crucial interest for indigenous cultural rights and land rights for traditional cultural purpose. Articles 13 and 14 of the instrument state in the relevant lines that:

Everyone has the right to benefit equitably from the conservation and sustainable use of nature and natural resources for cultural, ecological, educational, health, livelihood, recreational, spiritual or other purposes.

Indigenous peoples have the right to control their lands, territories and natural resources and to maintain their traditional way of life. This includes the right to security in the enjoyment of their means of subsistence.

Moreover, the Rio Declaration from 1992 recognizes in its Principle 22 that Indigenous People *have a vital role in environmental management and development because of their knowledge and traditional practices* and underlines that *states should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.*

The provisions and norms outlined above have certainly only been discussed in a very brief manner. Their importance should nonetheless be acknowledged at this moment. However, like underlined at several stages before, the main document for the discussion of the rights of Indigenous People is UNDRIP (2007). Thus, it will now be of vital interest to analyse the scope of the cultural rights provisions included in this international instrument.

5.3.2. Indigenous Cultural Rights in the UN Declaration on the Rights of Indigenous People

This part looks at the protection of cultural and identity rights of Indigenous People in the recent Declaration and outlines briefly the genesis of this international instrument.

In general, one might say that for the international community, every single new human rights instrument represents a victory – sometimes smaller, sometimes greater, but certainly in any case significant. The **UN Declaration on the Rights of Indigenous People** (hereinafter

UNDRIP), even though it is “only” a declaration and therefore not binding in International Law, surely represents one of the greater victories, given the long time of negotiation (25 years) until its final approval and the multidisciplinary participation in its development and formulation. These factors give UNDRIP a special place in the UN system and represent a crucial turning point for today’s and tomorrow’s generations of Indigenous People (see Burger 2009: 304 and Dorrough 2009: 264 f.)¹⁹⁴.

Concerning the outline of the declaration, it is generally agreed among experts on human rights of Indigenous People that the instrument does not create new and separate rights but rather *elaborates existing rights and applies them to specific cultural, historical and political circumstances* (Burger 2009: 308). UNDRIP thus sets out the existing law provisions concerning Indigenous People and puts them into the current socio-political and legal context. Its significance and power should therefore not be underestimated and the contained Articles can be considered as well established principles and rights. Due to matters of space only, I will not discuss in detail the single steps towards approval of the Declaration in its final wording, although its development would be worth an in-depth analysis, as it reflects important aspects of international law and politics¹⁹⁵.

Especially in the context of this paper, dealing with indigenous cultural rights, UNDRIP constitutes one of the primary references of my human rights based argumentation and the major Articles of interest for this topic shall thus be discussed in detail in the following.

5.3.3. Key Articles in the Declaration with respect to Cultural Rights and Identity and related International Law Provisions

¹⁹⁴ There is obviously an intensive debate on the significance and power of the Declaration in its present legal nature. Some argue that given the historic practice in the UN system, it is still likely that the Declaration will lead to further steps in International Law – like for instance the adoption, in the far future, of a convention on the rights of Indigenous People. Some argue that given the little number of states party to the ILO Convention 169, even if further steps would take place, their impact on the standing of indigenous right in International Law is questionable (see for this debate i.e. Stavenhagen 2009: 356). And then, there are those states, like for example the U.S., who clearly oppose the Declaration in its final outline and if all, see it as an *aspirational declaration with political and moral, rather than legal, force* (U.S. Mission to the UN 2007: Observations).

¹⁹⁵ Several of the Articles of the Declaration have experienced changes over the 25 years of negotiation and it would certainly be interesting to conduct a study on this issue. Also, the work of the Working Group on Indigenous Populations of the Sub-Commission on the Promotion and Protection of Human Rights and the route towards the Declaration – including all the scholar work done in the process – definitely forms an integral part of the complex discussion of human rights of Indigenous People (see for instance Xanthaki 2010, Charters 2010 and Zalaquett Daher 2008).

I will now outline the content of the rights established through UNDRIP related to identity and culture, which are of importance and interest for the present discussion of human rights of Andean Indigenous People in the context of the coca leaf. Moreover, some related Articles and law provisions in other international treaties and instruments will be discussed in parallel. In twelve of its forty-five Articles the document establishes rights which concern the preservation and respect of cultural identity and traditional practices, which all, at a macro level, fall under the right to self-determination (see Rößler 2008: 81).

At the very beginning, the Preamble affirms that Indigenous People *are equal to all other people* and *all peoples* have the right to be *different* and be respected as such. Moreover, it recognizes:

the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources;

and

that respect for indigenous knowledge, cultural and traditional practices contributes to sustainable and equitable development and proper management of the environment.

(UNDRIP 2007: Preamble)

Article 7 of UNDRIP affirms the *rights to life, physical and mental integrity, liberty and security of person of indigenous individuals* and, in paragraph 2 that Indigenous People are holders of the collective right *to live in freedom, peace and security as distinct peoples*¹⁹⁶. It thus represents well established customary international law, and in the case of the right to life and the related provisions *ius cogens*, granted to *all* individuals and peoples (see ILA Committee 2010: 18).

An essential part of the Declaration concerning cultural rights is **Article 8** on ethnocide, which in parts reads as follows:

1. *Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.*
2. *States shall provide effective mechanisms for prevention of, and redress for:*

¹⁹⁶ UNDRIP: Art. 7, emphasis by the author.

(a) *Any action which has the aim or effect of depriving them of their identity as distinct peoples, or of their cultural values or ethnic identities;*

Although the terms cultural genocide or ethnocide are not as such mentioned in the final version of the Declaration, the wording of *forced assimilation and destruction of cultures* includes all elements of the term ethnocide when read in conjunction with the Declaration of San José (1982) as it is stated there that *ethnocide means that an ethnic group is denied the right to enjoy, develop and transmit its own culture and its own language, whether collectively or individually and in particular, the right of ethnic groups to respect for their cultural identity*¹⁹⁷.

Further more, Article 8 also reflects what the Secretariat of the Genocide Convention stated on the scope and meaning of cultural genocide in 1947 of being inter alia the *destruction or dispersal of documents and objects of historical artistic or religious value and of objects used in religious worship*¹⁹⁸. Article 8 also follows the provision in Article 5 of the UNESCO Declaration on Race and Racial Prejudice, which declares culture as a product of all human beings, a common heritage of mankind and also as a product which enables human beings to *recognize that they should respect the right of all groups to their own cultural identity and the development of their distinctive cultural life, as being values essential to its identity*¹⁹⁹.

What is crucial though, is that the content of Article 8 is indeed well-grounded in both of the international human rights covenants. The prohibition of forced assimilation and destruction of indigenous culture falls under the scope of Article 27 of ICCPR and any action which divests Indigenous People from their cultural values, ethnic identity and cultural activities is *de facto* a breach to this Article, and hence a violation of an internationally binding law provision (see Xanthaki 2010: 2). Article 15 of ICESCR, like already mentioned previously, clearly and explicitly establishes the right to cultural life and in this context the protection from cultural genocide. Read in conjunction with Article 4 (4)²⁰⁰ of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities this Article is certainly addressing sub-national groups, like minorities or Indigenous People (see *ibid*).

¹⁹⁷ Declaration of San José 1982. See for a discussion on the changes on wording during the negotiation for instance E/CN.4/2002/WG.15/CRP.8: 6.

¹⁹⁸ Secretariat of the Genocide Convention, cited in Xanthaki 2010: 2. In the final version of the Genocide Convention, protection against ethnocide or cultural genocide is not mentioned though.

¹⁹⁹ Declaration on Race and Racial Prejudice 1982: Art. 5.

²⁰⁰ *States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.*

The three major Articles covering indigenous cultural *rights* in UNDRIP are 11 – 13 (see ILA Committee 2010: 20). In **Article 11**, which contains provisions on indigenous customs and traditions, it is stated that:

1. *Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.*
2. *States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs²⁰¹.*

Article 12, focusing on the spiritual and religious protection of indigenous culture:

1. *Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects;*

And **Article 13** of UNDRIP, regarding the histories, languages and philosophies (the intangible heritage²⁰²) of Indigenous People reads, in parts, as follows:

1. *Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures ...*

The three Articles are closely related and overlap in their content in several points, addressing similar rights – of positive and collective nature. But despite of the repetitions, or maybe even more so, they accurately reflect the problems and challenges Indigenous People experience and see themselves confronted with, concerning their cultural rights: discrimination and stigmatization of their traditional way of life and their cultural habits, practices and religious

²⁰¹ UNDRIP 2007: Art. 11; emphasis by the author.

²⁰² See Xanthaki 2010: 20.

ceremonies. They mirror the Indigenous People's holistic understanding of culture, which embraces land, tangible and intangible heritage (see Vrdoljak 2005:11).

The importance of culture for the identity of human beings, individually and collectively, and for their development is strongly recognized in International Law. The UNESCO Declaration of the Principles of International Cultural Co-operation (1966), for instance, expresses that:

1. *Each culture has a dignity and value which must be respected and preserved,*
2. *Every people has the right and the duty to develop its culture.*
3. *In their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage belonging to all mankind*

And that:

*International Co-operation ... shall respect the distinctive character of each [culture]*²⁰³.

Further more, the UNESCO Universal Declaration on Cultural Diversity, adopted in 2001, affirms the importance of the *respect for the diversity of cultures, tolerance, dialogue and cooperation, in a climate of mutual trust and understanding*²⁰⁴ for international peace and security and, in Article 4, declares that the *defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity*²⁰⁵. It therefore expresses universal human rights as a mean to guarantee cultural diversity. This UNESCO Declaration links the notion of cultural pluralism with that of the protection of culture as an integral part of the universal protection of human rights. I have mentioned the term “intangible cultural heritage” above in the context of its relevance to indigenous culture. The term in its international legal context derives from the UNESCO Convention for Safeguarding of the Intangible Cultural Heritage (2003) which defines it as *practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage*²⁰⁶. It is further stated, that through the continuous recreation and practice and the transmission between generations, this intangible cultural heritage provides the respective communities and groups with *a sense of identity and continuity, thus promoting respect for*

²⁰³ Declaration of the Principles of International Cultural Co-operation 1966: Arts. 1 and 5; emphasis by the author.

²⁰⁴ Universal Declaration on Cultural Diversity 2001: Preamble.

²⁰⁵ Ibid: Art. 4.

²⁰⁶ Convention for Safeguarding of the Intangible Cultural Heritage 2003: Art. 2 (1).

*cultural diversity and human creativity*²⁰⁷ and is manifested, amongst other things, in the *social practices, rituals and festive events*²⁰⁸ of a cultural community (entity).

What is crucial for the present topic is that the convention explicitly sets its provisions in relationship to Indigenous People, as it recognizes in its Preamble that indigenous communities *play an important role in the production, safeguarding, maintenance and re-creation of the intangible cultural heritage, thus helping to enrich cultural diversity and human creativity*. The concepts included in the treaty are widely reaffirmed in the package of rights covered in Articles 11 – 13 of UNDRIP. Moreover, the Articles have sound basis in the Daes' *Principles and Guidelines for the Protection of the Heritage of Indigenous People* (1995), which affirm that Indigenous People are the *primary guardians and interpreters of their cultures, arts and sciences* (3), that the worldwide recognition and respect for their customs and traditions and the transmission of this heritage to future generations is *essential to these peoples' enjoyment of human rights and human dignity* (4) and that this heritage includes inter alia the *ceremonies, symbols and designs, narratives and poetry, all kinds of scientific, agricultural, technical and ecological knowledge, including cultigens, medicines and the rational use of flora and fauna* (12) (Daes 1995: Principles 3, 4 and Guideline 12). The Special Rapporteur additionally insists that no alienation of the indigenous cultural elements should be allowed or tolerated by International Law, unless in consent with the Indigenous People targeted or affected by such laws (see Xanthaki 2010: 21). In addition, indigenous representatives have frequently emphasized that the elements of cultural heritage stand in a symbiotic relationship and in this sense sustain and develop the collective identities of the indigenous communities (see Daes 1995: Guidelines 11- 13). A different important aspect in this context is the underlying element of *spirituality* of the indigenous cultures. It is vital to stress, that the relationship between Indigenous People and their traditional lands and resources goes beyond the classic (western) concept of proprietorship and is predominantly defined by the notion of spirituality of the cultures (see Vrdoljak 2008a: 202)²⁰⁹. This specific notion is also established in the ILO Convention 169, Article 13 (1) and in one of the most popular land rights decision so far: the case of the Awas Tingni in Nicaragua, where the Inter-American Court of Human Rights ruled that:

²⁰⁷ Ibid.

²⁰⁸ Ibid: Art. 2 (2c).

²⁰⁹ Vrdoljak bases her discussion on the spiritual notion of indigenous culture to a wide extent on the work done by the Special Rapporteur Daes, on the Indigenous peoples and their relationship to land (see for instance Daes 2001: 38).

For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations²¹⁰.

Finally, the three Articles on indigenous cultural rights surely reflect the genuine norms established in ILO Convention 169.

Another vital provision for the aspect of indigenous cultural rights is **Article 31²¹¹** (on intellectual property rights), which sustains the right of Indigenous People to:

maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts... and their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions²¹².

It is crucial in this context, to give due account to the understanding of Daes on *cultural heritage as everything that belongs to the distinct identity of a people and which is theirs to share, if they so wish, with other peoples* (Daes 1993: para. 24) and the applicability of this comprehensiveness to the Article stated above²¹³. In addition, also to be taken into account is the definition of indigenous traditional knowledge of the Secretariat of the Permanent Forum of Indigenous Issues as

The traditional practices and culture and the knowledge of plants and animals and of their method of propagation; it includes expressions of cultural values, beliefs, rituals and community laws, and it includes knowledge regarding land and ecosystem management²¹⁴.

²¹⁰ Case of the Mayagna (Sumo) Awas Tigni Community v Nicaragua, (Judgment) (2001) 79 I/A.

Ct H.R. (ser. C): para. 149

²¹¹ The Article is consistent with several international human rights instruments, like for example, both International Covenants, Art. 27 (2) of the Universal Declaration of Human Rights and Art. 4 (2) of the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, which states that: *States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.*

²¹² UNDRIP 2007: Art. 31 (1); emphasis by the author.

²¹³ Indeed, the content of this provision is to be evaluated under a spiritual and holistic conception (in line with the nature of indigenous culture) and, in accordance, safeguarded as a fundamental element of the identity of Indigenous People and hence an essential prerequisite for the full realization of indigenous collective and individual human rights (see ILA Committee 2010: 21).

²¹⁴ UN Doc. E/C.19/2007/10: paragraph 2, emphasis by the author.

In addition, a reference to cultural knowledge is made in the Convention on Biological Diversity (1992), which in its article 8 (j) calls on contracting States to *respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities ... and promote their wider application with the approval and involvement of the holders of such knowledge, innovation and practices.*

Baring in mind the cultural element in focus of this paper, the coca leaf, this interpretation of traditional indigenous knowledge is of crucial importance for the understanding of the value and relevance of a historic continuity of this traditional cultural good and the respective forms of cultural practices in the Andes – especially if one considers the occurred misinterpretations and scientific shortfalls in the scheduling and classification of the natural plant.

The last Article of fundamental relevance which shall be cited in parts at this place is **Article 34**²¹⁵, confirming the right of Indigenous People to *promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures [and] practices... in accordance with international human rights standards*²¹⁶. In short, this Article applies self-determination on cultural matters, but also explicitly puts it in relationship to the overall framework of internationally acknowledged human rights (see Vrdoljak 2008b: 41 and Xanthaki 2010: 30). The content of the wording concerning the obligation of being in line with other international human rights standards will be of relevance in the subsequent Chapter, when the international legal provisions on the rights of Indigenous People will be put in context with those of the drug control treaties²¹⁷.

Summarizing, UNDRIP employs a broad understanding of the terminus culture, in consistence with other bodies and instruments of the UN. In this wide interpretation it embraces the protection of knowledge, beliefs, art, morals, customs, and habits and stands in relation to language, literature, philosophy, religion, science and ideological systems (see *ibid*: 22). To date, the instrument is probably the most far reaching one in this aspect and comes closest to the indigenous understanding of culture as a holistic, communal and intergenerational phenomenon (see Vrdoljak 2008a: 227), paramount for the nature and

²¹⁵ Again, like the other Articles, 34 is extensively recognized and reflected throughout the legal system of the UN. Arts. 1 and 27 of ICCPR and General Comment Nos. 12 and 23; Art. 1 of ICESCR; Arts. 2 and 5 of CERD; Arts. 5,8 and 9 of ILO Convention 169; Arts. 1, 2 and 4 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; Arts. 1 and 5 of the Declaration on the Right to Development and Arts. 1, 3 and 5 of the Declaration on Race and Racial Prejudice all include related, similar provisions.

²¹⁶ The rights covered in Art. 34 reflect inter alia international legal provisions like Article 27 of ICCPR and Article 2(2) of CERD.

²¹⁷ Although, it should be added for matters of clarifications, the drug control treaties do not represent international human rights standards.

identity of every people. It represents an instrument, which due to its exhaustive inclusion of the several aspects of the right to culture and tradition of Indigenous People, affirms the will of the international community – showed in the large approval of the Declaration – to protect and respect those rights and set the respective legislative structure for their implementation on the national and international scale.

PART III

CORRELATING TWO STRANGERS

“Andean Indigenous People’s human rights and the drug control provisions in context “

6. Discrepancies, tensions and the look ahead

In the recent years the coca debate has experienced a new wave of popularity and importance in International Law, regional and domestic legal debates, and has caused various incidents of civil uprising. Particularly in the Andean (Plurinational State of) Bolivia the *cocalero* movement gained power and influence in the national political sphere and reached its peak with the election of *cocalero* leader Evo Morales Ayma as president.

The coca leaf itself has particularly in the last years been widely and passionately presented by indigenous individuals of the Andean region as the very heart of their culture and tradition, which has, inter alia, misleadingly caused interpretations of their participation in the world cocaine production and accusations of being involved with global drug trafficking (see BFDPP/ IHRA 2008: 30, TNI 2008: 36 and El Pais/ no year)²¹⁸.

Perhaps the more convincing explanation to this popular uprising of coca is the fact that the world is undergoing a globalization of cultures, a massive dissemination of similar cultural goods and a respective loss of tangible cultural identity (see Calderón/Laserna 1994: 33). The inherent homogenizing processes provoke a response which is characterized by an enforced search for identity in lost traditions, mythical revivification, reflection of one’s historic traditional and cultural habits and the claim to the right to distinct culture in all its aspects (see Laserna 1997: 49 f.). In practical terms, these assumptions can be perceived when studying the rhetorical changes within the Commission on Narcotic Drugs in the past years, where both

²¹⁸ To give an example of the rather non-dialectic interpretation of *cocaleros* (including Indigenous People) as participants in the drug trafficking business, the words of former FELCN Commander Gutiérrez seem to be pretty adequate: he stated that *one of the enemies are the coca producers ... trained by the drug traffickers [who] oppose the eradication of the bush* (see cited in SEAMOS 1991: 74). Another statement, by the former Bolivian Minister of Interior, underlines the unbalanced approach to the whole issue and the willingness to undergo the overall principle of human rights for – *de facto* minimal – achievements in the war on drugs. He recognized that they *broke the rules*, by placing more importance on this war than on the respect of human rights of the people affected (see *ibid*: 60 f.).

extremes (INCB contra and Bolivian government pro) adopted an explicit and rather harsh wording for the underlining of their perspective on the coca issue.

In (the Plurinational State of) Bolivia for instance, the coca leaf has become a national symbol for indigenous identity and traditional culture. But even non-indigenous individuals have adopted elements of traditional cultural practices, like the *accullico* custom, or the consumption of coca tea in the general public (cafés, restaurants, official settings etc.). This reflects the symbolic value of coca in various segments of society and carries a connotation of an assertion of national identity in face of prohibitionist control mechanisms, inflicted from the outside (see Laserna 1997: 50 and 54).

In this last chapter, the results of my discussions shall be outlined, on the basis of the previous analysis and findings in Parts I and II. One question in focus of this work was, whether there are legal discrepancies within the UN system. This issue shall be dealt with and a concluding analysis shall be provided. The essential key aspect in this context will be human rights and their violations.

In this sense, part of the concluding analysis is to delineate the contemporary global situation of the world coca and cocaine *problem* (as part of the *world drug problem*) from a critical perspective.

Finally, a few ideas for the “road ahead” in the context of international drug policies under a human rights-based approach with special regard to Indigenous People (of the Andes), in line with my key research question, will be drafted for the completion of my paper.

6.1. A legitimate war on drugs?

Ladies and gentlemen, we have an image problem. Hardly a week goes by without another critique of our drug control efforts. Concern is manifested to me here in Vienna as much as when I am on mission in distant locations. Wide media reporting expresses equal apprehension about the status quo: too much crime, and too much drug money laundered around the world; too many people in prison, and too few in health services; too few resources for prevention, treatment, and rehabilitation; too much eradication of drug crops, and not enough eradication of poverty (Costa 2008).

This statement of former UNODC Executive Director Antonio Maria Costa highlights very clearly, that indeed, the UN drug control mechanism has *an image problem*. If already the head of office publicly acknowledges this fact, the need of addressing this very severe problem is acute. The question whether the drug war is legitimate has been raised in several

contexts of the phenomenon in preceding parts. At this point, selective human rights violations in the producing countries will be outlined, in the attempt to analyse yet another aspect of the legitimacy-debate.

6.1.2. Brief examples of selected human rights violations on peasants (indigenous and non-indigenous) in Latin American coca producing countries

Aerial fumigation in Colombia:

In December 2000, the government of **Colombia** started its massive aerial spraying campaign under intensive U.S. strategic, financial and military support (widely known as the [new] Plan Colombia). Very briefly, one of the main activities of this plan was the aerial fumigation programme, with the objective to cut the supply of cocaine destined for the U.S. markets. In the course of the programme vast hectares of coca and other crop fields have been sprayed with plant-killing herbicides, which *de facto* not only attacked the illicit coca cultivation fields but also other licit plantations, ruined the soil for any further agrarian utilization and even affected peasants as far as Ecuador, due to the indiscriminate spraying from air. Additionally to food crops which are targeted directly and intentionally (those legal crops which are interspersed with coca), spray drifts caused unintended consequences of far-reaching impacts on legal food crops and cattle-grazing fields (see Marsh 2004: 2). The activities initiated a *vicious circle of human, social and environmental destruction in the extensive Andean-Amazon region* (TNI 2008: 39), amounted to one of the biggest human rights violations in the course of the *war on drugs* and caused several flows of migration of peasants whose land and means for a sustainable life and income were destroyed. What is more, with respect to sustainable coca eradication or destruction of the cocaine trade originating from Colombia, it proved to be completely ineffective (see Jelsma 2000, Interview Lessmann 11.2.2010 and TNI 2008: 44 *f.*). An extensive amount of human rights, covered by various international treaties, have thus been continuously and deliberately violated by both the Colombian and the U.S. governments, and tolerated by the international community.

Among the UN bodies, the Committee on the Rights of the Child (CRC) stated its concern about the aerial fumigation practice's effect on the environmental health of vulnerable groups, in particular children, arising from the glyphosate substance used for the spraying²¹⁹. Also, the

²¹⁹ See CRC/C/COL/CO/3: para. 72.

UN Special Rapporteur on the Right to Health voiced similar concern about the aerial crop sprayings along the Colombia-Ecuador boarder in 2007. He recommended that the activity should be discontinued as it *jeopardise[s] the enjoyment of the right to health in Ecuador* and argued that *[i]t is imperative that when considering this very important issue the human right to health – at root, the well-being of disadvantaged individuals and communities – is placed at the centre of all decision-making* (Hunt 2007: 2 and 4). The government of Ecuador actually seized the International Court of Justice (ICJ) of the dispute between its country and neighbouring Colombia due to the aerial fumigation practice. Ecuador claimed that the toxic substance (herbicides) caused tremendous effects to health and property of its people and the environment. It alleged that Colombia was violating its obligations under International Law, called for indemnification and requested the ICJ to investigate on that matter²²⁰.

Forced and “voluntary” eradication in Bolivia and Peru:

Similar scenarios have taken place in (the Plurinational State of) Bolivia and Peru, even if not in that a shocking magnitude up to the last years. One UN study in **Peru** for example concluded, that coca eradication programmes led to a high percentage of school drop outs and that, where wide-spread eradication programmes were conducted, the farmers reported a decline in their quality of life while following the voluntary eradication programmes induced by the UN (see UNODC 2005: 10 and 13). In 2003 the forced eradication policy performed on legal producers in the region of Aguaytía resulted in a backlash of the *cocaleros* and farmers, staging a strike against then president Toledo’s administration, which caused significant civil tensions in the country (see Spedding Pallet/ Cabieses Cubas 2004: 16). Another point is the rather discriminative attitude towards the coca farmers, represented in - inter alia - television reports, which linked coca with drug trafficking, a generalisation without the required grounds, as their certainly exist Peruvian regions where all of the cultivated coca is destined for traditional, legal consumption (see *ibid*: 26).

In (the Plurinational State of) **Bolivia**, aggressive eradication efforts by the government started in 1995 and the *cocaleros* soon strongly resisted to this policy. Especially in the Bolivian Chapare, the region of “in transition” (according to Law 1008), the tensions between military troops and the *cocaleros* have resulted in serious human rights violations from the government side, including excessive use of force (a disturbing pattern of killings)²²¹,

²²⁰ See Ecuador v. Colombia.

²²¹ To give an example, the UMOPAR were equipped with U.S. army-M16 automatic assault weapons and a number of others utensils like tear gas and smoke grenades, which were all used excessively in the

mistreatment, arbitrary detention, the suppression of peaceful demonstration and disproportionate application of criminal measures against Indigenous People. Various human rights institutions have investigated and documented the individual cases of deaths and injuries of the people in the region and showed that the grounds for these incidents had been unjustifiable (see for instance HRW 1996 report). Especially the militarization of the Chapare has long been of concern. To give an example, in 2003, road-blockades of the *cocaleros* and other sectors against the U.S.-encouraged eradication led to excessive use of force by the security forces, with the result of eleven deaths and multiple injuries on both sides (see Ledebur 2003).

In addition, it should be underlined that the so called *war on drugs* has on the one hand lowered coca prices and on the other increased the instability of coca markets, which forced the peasant families, whose income depends on the yield from coca production, to increase land and labour allotted to the coca cultivation. However it has not been able to have a discouraging effect on the coca production itself (see Laserna 1997: 87).

Summarizing, if we look at the very briefly outlined examples above, the characteristics of drug policies can be defined as illegitimate, inhumane, ineffective, unjust, disproportionate and immoral. The eradication, spraying and substitution-based rural development programmes (alternative development programmes) have proven largely ineffective, noxious and indiscriminate, and have seriously violated basic individual and collective rights (see TNI 2005: 1 and 3).

Excuse: A legitimate war on drugs?

Facts and figures of the current world coca and cocaine market:

If compared to the reach and relevance of anti-drug policies, the quantity and quality of the information and knowledge given and distributed about illegal drugs is astonishingly limited to a few key actors in the field. What is more, if one reviews the data critically, certain significant discrepancies and differences between the estimates arise. Especially the estimates on coca production are frequently a source of confusion and manipulation (see Laserna 1997: 204 *f.*). Due to this fact, origin and political background of the data collected and analyzed should always be taken into account. For this very brief outline concerning the magnitude of the coca and cocaine trade in recent years, I will mainly use data from UNODC (the World

confrontations with the *cocaleros* and have certainly been disproportionate. Thus, among others, the right to life of the peasants, indigenous farmers and their families was endangered and violated.

Drug Report 2010) and especially from the Interview with Thomas Pietschmann, because being the most dominant actor in the field, UNODC genuinely provides the most recent analysis²²². The main objective of including this excursion is to give a facts and figures-background for the discussion of argumentation lines pro and contra the de-penalization of coca in its natural form. Moreover, the objective is to underline the dispersion and effects of the illegal trade in its full complexity and discuss the inability of the current international drug policies to tackle the situation.

What are the changes in numbers, from 2007/08 - 2009? In general, global coca cultivation decreased by five percent from 167,600 ha in 2008 to 158,800 ha in 2009, which is mainly due to a massive decrease in Colombia.

In respective terms, coca cultivation in Peru increased by seven percent from 2008 and reached 59,900 ha in 2009; in (the Plurinational State of) Bolivia it remained by and large at the same level with only a slight increase of one percent to 30,900 ha in 2009 and decreased - for the third consecutive year - in Colombia by sixteen percent, which equals 68,000 ha of coca cultivation in 2009²²³. Thus, there is presented an increase in Peru and (the Plurinational State of) Bolivia and a massive decrease in Colombia, which is, in the official opinion of UNODC, mainly due to the eradication (forced eradication) policies. In 2000, the big eradication programmes started to be conducted; as a consequence, significantly more hectares have been eradicated than coca produced. The cocaine figures reflect a similar trend to that of coca production apportionment: Cocaine production data is mainly reflected in the global potential production of fresh coca leaf for manufacturing into cocaine. The balance drawn was relatively stable between 2004 and 2007 (850,000 mt²²⁴) and started to decline in 2007 and 2008 (by fourteen percent) and continued to do so in the subsequent year (by four percent). There has been reported a significant decline in Colombia, from 700 mt in 2000 to 450 mt in 2008 and again to 410 mt in 2009; a significant increase in Peru from 140 mt in 2007 to 300 mt in 2008 and nearly the tripling in (the Plurinational State of) Bolivia from 43 mt to 113 mt in 2008²²⁵. That means in percentages: 28 percent less coca production in Colombia, four percent growth in Peru and nine percent growth in (the Plurinational State of)

²²² The DEA is the second most important actor in the field, but in general there is constant co-operation between the institutions and thus data and figures are adjusted.

²²³ In other terms, between 2000 and 2009, coca cultivation in Colombia decreased by 58%, increased by 38% in Peru and more than doubled in (the Plurinational State of) Bolivia, to a plus of 112% (see UNODC 2010: 65).

²²⁴ Mt stands for metric tons.

²²⁵ UNODC was not able to provide point estimates of the level of cocaine production for Peru and (the Plurinational State of) Bolivia in 2009, due to the ongoing review of conversion factors. They decided consequently to estimate them as a range (see UNODC 2010: 163), which reflects the mistiness of global drug data and statistic figures.

Bolivia. For Colombia it is important to note that the decline is to a great extent due to a lesser yield, because the plantations are not as big as before, which again is due to the aerial fumigation programmes of the anti drug authorities. Thereby farmers are not able to work as efficiently anymore, because the smaller fields have, in actual terms, a lesser yield than the big plantations used to have. Additionally to that, they do not invest in insecticides, following the motive of *little investment into unstable economies* (Interview Pietschmann 25.3.2010). Concerning market trends, in an inquiry with students from the U.S. with regard to cocaine availability (that also involves crack cocaine) results show that there has been an essential decline in availability in the year 2008, reflected again in the figures for 2009. In terms of prices (for North America), from 2006 onwards, cocaine prices rose by trend. From 2006 to 2009, they actually doubled. That is of course not a coincidence, but due to the lesser amount of cocaine entering the markets; lesser cocaine enters because the Mexicans traffic less towards North America, which is due to their severe domestic problems. The frequent battles between themselves (cartels) and with the army and police forces means, that *they are highly occupied with fighting and have less time and resources for the trafficking business. Plus, as less enters the markets, they also fight about this lesser amount of cocaine* (ibid). Given these circumstances, the propensity towards violence has increased significantly as well.

With respect to cocaine consumption, the following picture is drawn: decline in the U.S., increase in Latin America and a mixed picture in Europe. While in most European countries it stayed rather stable (except France), there is a significant increase in the Balkan States and also, only slightly but still, in the northern European countries. There has also been a significant increase in Australia, slight increase in Africa, which is principally in the region of West-Africa. Single markets rose, like for example England rapidly in 2009, although there do not exist any apparent explanations for this phenomenon.

With respect to the trafficking routes, there are in general two major directions: One, to which (still) by far the biggest amount goes to, is the route towards the U.S., from Colombia, through Mexico, and from there along the border into the U.S., distributed by the Mexican cartels. Until the 1990s it was the Colombian cartels who dominated the traffic into the U.S., but they were superseded by the Mexicans in the mid/end 1990s. The two major reasons for that are the smashing of the big Colombian cartels and the establishment of the “extradition policy” in Colombia in 1997. The policy left also the smaller Colombian cartels in anger of being extradited to the U.S., even for minor trafficking. In consequence they “decided” to let the Mexicans deal with the problem and instead focused on the more secure trading with the

Mexicans domestically first. Naturally, this development meant less money for them, but also hardly no risk of being handed over to the U.S. authorities. Due to the loss of monetary income, the Colombian cartels created a new, highly lucrative, track for cocaine trafficking, which is the trade with Europe²²⁶. There have historically always been links to Spain, through which they established a direct trafficking route from Colombia to Europe, which has nowadays been replaced again by the more dominant route from Colombia to Venezuela and from there - either directly, or via the Caribbean Islands – to Europe (see UNODC World Drug Report 2010 and Interview Pietschmann 25.3.2010).

In a few words, based on a critical analysis of UNODC's official facts and figures, one might paraphrase the situation as being an interesting stable one, without any significant developments or changes into any direction. Since the middle of the 1980s international drug control activities have not changed drastically with respect to coca and related substances. Through forced, or in some regions voluntary, eradication the international community intends to reduce the quantity of coca cultivation and production. Yet, nearly since the beginning of these policies, the area under cultivation has stayed rather stable, around 200.000 ha, annually (with slight variations of plus/minus ten percent). In addition, Colombia still performs aerial spraying for coca crop interdiction, which has caused tremendous effects: at its starting point in 1994, the affected surface was of about 40.000 ha, in 2000, of about 160.000. Annually, nearly the double of hectares are sprayed and eradicated than those reported under coca crop cultivation. Hence, without achieving the expected results, the forced eradication policy has caused a civilian and environmental disaster: it is not sustainable, has ruined land and soil and led to a continuous migration of the peasants and coca farmers into the highlands (see Interview Lessmann 11.2.2010).

Moreover, most of the figures indicate a saturation of markets, which is reflected in stable or falling farm gate prices²²⁷. A different aspect which has to be considered in this context is that apparently the current prohibition policies do not seriously threaten the drug-traffickers. For instance, there have not been any attempts to create or establish new ways for supply with natural coca – that is, the exploitation of new (climatically similar) regions for coca cultivation and production. The inherent assumption is that there is neither the necessity for a

²²⁶ For instance, a comparison in prices between producer and consumer markets show a mark-up of approximately 30 times between prices in Colombia, Peru and the (Plurinational State of) Bolivia and cocaine wholesale prices in the United States, and 60 times in the case of Europe (see UNODC 2010: 170).

²²⁷ The term defines a basic price with the "farm gate" as the pricing point, that is, the price of the product available at the farm, excluding any separately billed transport or delivery charge (OECD definition available at URL: <http://stats.oecd.org/glossary/detail.asp?ID=940>).

creation of alternative regions for cultivation, nor exists the required demand to assume that such exploitation would be profitable for the drug trafficking organisations. Supply and demand are hence considered to be in a good balance (see *ibid*). This is also reflected in the estimates for 2006 of the White House Office of National Drug Control Policy, which showed that the U.S. street price for cocaine is falling while purity grades are rising, which are both signs for a robust supply and availability (see Walsh 2007: 6)²²⁸.

6.2. The need to correct an historic error: A human rights-based approach

Drug control measures could easily be justified and presented as a necessity to the aim of protecting public order and human health. After all, there certainly exists a global drug problem. But a number of questions still have to be raised before generalizing a debate of such complexity and political and legal relevance. Are the measures adopted proportionate? A vast number of studies, human rights reports and surveys by international institutions show that this question can be answered with No²²⁹. Is it effective? Again, a tentative yet concrete answer has to be, No. Various official and expert sources show that the demand-supply picture of coca and cocaine is a rather stable one, regardless of the characteristics of anti-drug policies and programmes²³⁰. And the last and most important one for the present work is the question concerning the conformity of the UN system regarding the two segments in focus: is the international drug control with respect to coca and cocaine in line with the relevant human rights treaties and international instruments and provisions on the (special) rights of Indigenous People? This last question requires a more thorough discussion and will therefore be analysed now in the following.

At the UN level, resolving this problematic question is certainly not an easy task, due to the inherent contradictions within the system (see Part II – possibility of UN reforms). On the one side, the UN is *the* international body responsible for the promotion and expansion of worldwide human rights protections and promotes this principle as the core purpose and overarching framework of the organisation and its work since the very beginning (established in universal documents like the UN Charter and the UDHR). On the other side, particularly since

²²⁸ Yet, figures of UNODC's World Drug Report 2010 indicate that price and purity data for the U.S. confirmed a reduced availability of cocaine (shortage on the U.S. markets). (see UNODC 2010: 170).

²²⁹ I base this reasoning upon the brief outline of human rights violations – which is really only a rough introduction to the multitude of violations – outlined in the previous part. Additionally, see BFDPP 2008: 7.

²³⁰ See *inter alia* the excursus on the facts and figures of the current world coca and cocaine market and trade.

the second part of the twentieth century, it is also *the* international body tasked by the international community with promoting and expanding the international drug control regime (see BFDPP 2008: 1). The outcome is a complex situation which at first sight even shows parallels to Faust's *two souls alas! are dwelling in my breast*. But at closer sight, there is an established hierarchy which the UN system could apply to in order to overcome these discrepancies – it is the hierarchy of human rights over all other provisions. It has been affirmed in preceding parts that the UN Charter and the expert-interpretations and comments on it set out explicit references in this context. Reiterating, if the drug control provisions are in conflict with the human rights obligations in the UN Charter and the UDHR, priority must be given to the protection of human rights²³¹. The provisions of the UN Charter make clear, that its inherent obligations take precedence over other, conflicting UN treaties.

Human rights law should thus not be regarded as a mere counter-balance to drug control treaties, as it occupies a much bigger legal authority in the international system. They should be seen as a *lens through which all drug control efforts must be filtered* (ibid: 43).

Apart from this general contemplation, with respect to the special topic of the coca leaf, several other considerations lead to the question whether there are any significant grounds for an inclusion of the leaf in the Schedule I list. They all have been treated in their respective elements above, but shall be summarized at this moment again for the subsequent argumentation and conclusion:

In Part I of the present paper, it has been outlined that there does not exist sufficient scientific evidence for the inclusion of the coca leaf in the Schedule I list of prohibited substances. Some scholars argue that there is still a need of enhanced statistical and scientific data acquisition on the (innocuous) properties of the coca leaf and its relevance for the human system. In short, this is not necessarily true – there are enough data, studies, and reports which all show that the coca leaf has neutral or even benevolent, positive properties (see Interview Metaal 3.2.2010). Additionally, its relevance as a traditional cultural good has been highlighted and substantiated by the analysis of its historic genesis and the evaluation of its deep roots in traditional indigenous societies.

It has been outlined in Part II that the notions of legality and illegality are in principle the results of political decisions and historic and social processes taken by human beings, either based on individual will or collective intentions and interests. They thus contain a certain dynamic aspect and are not irrevocable. As Morgan argues, alcohol and drugs are *de facto*

²³¹ See A/59/2005/Add.1 (23 May 2005): para. 7.

shaped and interpreted by the fundamental structures of a given society (see Morgan 1983: 1). Hence the perception on alcohol and drugs is also shaped by the members of this society. This is per se not problematic, but can become difficult when two or more distinct perceptions of distinct societies have to be “merged” into one internationally accepted law provisions. The illegality of cultivation and production of certain drugs, parallel to the legality of others, has in overall terms little to do with their inherent physical, toxic and chemical properties and plenty to do with international power relationships and motives. As a consequence, there exist on the one hand a number of drugs which are legal in spite of numerous proofs of their harmful effects (like tobacco and alcohol) and on the other a number of natural drugs which are - on an international level - illegal, despite the growing scientific evidence of their therapeutic effects (such as, for instance the coca leaf and cannabis) (see Laserna 1997: 131). It has also been outlined in Part II, that if there is one overarching principle which should be the basis for any internationally decided action and implementation or establishment of (new) international legislation, it is the principle of human rights of all peoples. This aspect is a very dominant one in the current debate. But obviously, the discussion on the decriminalization of the coca leaf, on an international scale (not only domestically in the Andean countries) contains several other aspects of vital importance.

One is the argument, that *you cannot prohibit what you cannot control* (Laserna 1997: 200), because otherwise the inherent illegality of the prohibition generates huge beneficial opportunities for those who participate in the illegal activity voluntarily or out of necessity. This argument reflects one angle of the legalisation-perspective, which has gained increasing dominance in literature and political debates over the last years. A key element for discussion in this context is the economic side of a possible legalisation of the coca leaf.

The economic effects and consequences of a decriminalization of the coca leaf and opening of markets for natural coca products are generally difficult to predict. Hence, any studies on the issue can only include rough estimates. Certainly, since the opening of markets could lead to enforced coca cultivation, also in other parts of the world, the Bolivian and Peruvian market prices could face pressure. Nonetheless, one might make the assumption that governments would try to avoid coca cultivation in their territories in order to reduce the risk of illegal manufacturing and processing of the plant. One consequence might be that the Andean countries which traditionally grow coca since millenniums would have a new market niche (international export of natural coca products), which could be lucrative to them.

In any case, legality would also mean higher physical security, freedom from fear, freedom from arbitrary prosecution and price stability for *cocaleros* who have suffered from violence

against them and their families, destruction of their goods and means of subsistence and stigmatization of their ways of life (see Laserna 1997: 166 *f.*, Spedding Pallet/Cabieses Cubas 2004: 7, 13 and Ledebur 2003). Various scholars doubt a flooding of international markets with coca products, given that, first, the traditional ways of consumption and utilization of coca would culturally not be adequate and probably only accepted marginally outside their “home” regions and cultures (see Interview Metaal 3.2.2010). In exaggerate wording, it is highly unlikely that a western businessmen would sit in a meeting, chewing his *picchu*, as it would simply not go in line with culturally and socially accepted behaviour. Second, most of the recent analysis of trends and developments concerning the world drug problem, in the context of coca and cocaine, show that in principle the picture is a rather stable and unaltered one. Worldwide, there are neither significant surpluses nor massive shortages of coca derivates (see Interview Lessmann 11.2.2010, Interview Metaal 3.2.2010) and the current drug policy does not show any significantly successful outcomes in reducing production, trafficking or consumption of drugs – rather the contrary (see Metaal 2009). Due to this factor, an enforcement of the trafficking and consumption of coca derivates through international legal trading with natural coca products renders rather uncertain. There is already *plenty of coca* (see Walsh 2007).

In principle, the argumentation lines concerning a decriminalization of the coca leaf have since years been centred on various perspectives: the economic side, the scientific side, the harm-reduction side, the political side and the – what could be called – developmental side, focusing on the aspect that coca cultivation is a necessity for a lot of peasants in the Andean region in order to be able to survive²³². They all have one thing in common: they are debatable and whether to be in favour of or contrary to decriminalization is, based on these approaches, very much determined by one’s own political, sociological and ethical attitude. From a human rights based perspective, the picture is a different one. There is simply no room for discussion whether human rights of all people are to be respected or not. What has thus to be clarified now is whether the human rights of the Andean Indigenous People face violation due to the *war on drugs* and the penalization of the coca leaf, and if so, what would that in consequence mean to the international legal provisions concerning drug control. In short, if there has been committed an historic error, what could be possible means for its reparation?

Article 40 of UNDRIP provides that Indigenous People have the right to *effective remedies for all infringements of their individual and collective rights* and that decisions in this respect

²³² See for this discussion for instance Laserna 1997: 164 – 172, Metaal/ Jelsma et al. 2006: 16 – 19 and Henman/ Metaal 2009.

shall give due consideration to ... international human rights. It thus embraces the concept of *satisfaction* as a mechanism for redress where there has been moral injury. Satisfaction in line with the right to justice can include the implementation of effective measures for a cessation and prevention of the continuing of violations (see Vrdoljak 2008a: 223 *f.*). Closely related to this aspect is the guarantee of *non-repetition*, which, among its appropriate measures, can include *legislative measures* in order to *achieve the ends* of the declaration (see Article 38 of UNDRIP). Taking into account the UN Charter provisions on human rights and baring in mind that UNDRIP, as a human rights instrument, is, regardless of its legal weakness, an instrument in line with the UN Charter and the human rights covenants, the inclusion of the right to satisfaction and guarantee of non-repetition is also applicable to other international legal provisions, like the drug conventions. Baring in mind as well, that human rights instruments are not only aimed at states but, first and foremost, at the UN system itself as being a product of that very system (see Clavero 2009: 3), UNDRIP can certainly be considered as an important reference for the UN drug control conventions²³³. Hence, *de facto* there exists the legal foundation for an investigation of their human rights conformity with respect to Indigenous People.

6.2.1. Characteristics of policy reform: principles from an human rights-based approach²³⁴

Having clarified that the required legal foundation for a reform of the international drug conventions exists on the basis of numerous international human rights treaties and documents it is at that moment crucial to reiterate the underlying human rights principles which have to be recognized in the course of this reform. Several dominant aspects have emerged in this context:

Evidence-based

A reform of the UN drug control should be based on an exhaustive evaluation of policies on the premise of independent scientific investigation, instead of being based on ideological and political principles. A human rights-based analysis should be conducted with respect to the

²³³For instance, in The Declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities Article 9 states a similar provision in this context: *The specialized agencies and other organizations of the United Nations system shall contribute to the full realization of the rights and principles set forth in the present Declaration, within their respective fields of competence.*

²³⁴ This classification of principles is in parts based on TNI 2008: 60.

effectiveness of drug policies, their impact on society and the people affected. Moreover, constant monitoring of the protection of human rights of Indigenous People as part of the overall principle of human rights should form an integrated part of all UN bodies and institutions.

Differentiation

It is crucial to establish a system where substances are differentiated from patterns of use. Moreover, the properties of natural substances should be differentiated from those of manufactured ones. Natural plants show a significant distinction from their derivatives and hence should not be treated and penalized to the same extent. As it has been outlined in several parts of this paper, coca in its natural form shows beneficial qualities for the human body and its health, while the consumption of its concentrated derivative cocaine can have harmful effects. The international penalization of the traditional indigenous commodity (coca leaf) should thus not be based on the grounds of a, by trend, western societal problem with its derivatives crack and cocaine HCl.

Flexibility

The UN system should give due consideration to the socio-cultural differences in the context of its drug control policies. In its current outline today, the system still reflects western, northern, interests and cultural insensitivity. The norms and policies established on a global international level should be designed in a way that they leave essential room for manoeuvre for the protection of the rights of Indigenous People to continue their life in line with their traditional and cultural practices and customs.

Human rights and proportionality

Drug control activities and mechanisms should not take precedence over human rights. Rather, it should be the other way around. First and foremost, all sanctions should be proportionate to the crime committed. Forced eradication against farmers and Indigenous People who have no other means of subsistence or income or who regard coca and its consumption as an important part of their traditional culture and identity are examples of disproportionality and represent serious human rights violations.

Civil society participation

Indigenous People should have the full enjoyment of their right to be consulted in matters which affect them²³⁵ – even with respect to the formulation of drug policies. Their participation in the outline of international control mechanisms on certain drugs of natural origin (like i.e. coca and poppy seed) is a vital prerequisite for internationally effective, culturally sensitive and human rights-based drug control policies and programmes.

Development oriented

One of the MDGs principle goals is to eradicate poverty and hunger²³⁶. In this sense, drug control policies should be sensitive to poverty reduction instead of worsening the problem even more, through its forced eradication mechanisms and programmes. Indigenous People should not be deprived of one of their key elements in social and cultural life; neither should land and soil of peasants and Indigenous People be destroyed through the indiscriminate practice of aerial spraying, forced crop destruction and uprooting, displacement of communities etc.

The principles outlined above show that a solution to the problematic situation of the coca leaf in International Law is urgently needed, in order to repair the injustices Andean Indigenous People have suffered from since the colonial rule until the present day. The discriminating and stigmatizing international policy on the coca leaf has denied the value and significance of Andean culture (see TNI 2008: 63). As it has been outlined at several stages of this paper, the current drug control system is not consistent with international human rights *of all peoples* and blocks essential steps towards a human rights-based approach. Without question, reforming this system would confront the international community with serious challenges. Nonetheless, it is a necessity in order to achieve conformity and coherence in International Law.

²³⁵ See numerous Articles of ILO Convention 169 and UNDRIP (i.e. Arts. 15, 17, 27, 38 etc.).

²³⁶ See <http://www.un.org/millenniumgoals/>.

7. Conclusion

Internationally, there is an increasing awareness that the longstanding legal and political structures of the drug control mechanism have either ignored or worked to the detriment of the rights of Andean Indigenous People. A growing scholarship reflects the devaluation and negation of indigenous cultures as an inherent part of the evolution of international drug control, and international as well as national legislation continues to labour under these often stigmatising, discriminating legacies.

Human rights violations on Indigenous People originating from the international (UN) drug control system must be highlighted and brought to a termination. International drug control has to be implemented under a human rights-based premise in order to avoid direct human rights violations or a complicity in or tolerance of human rights violating drug policies on the field. The special need of human rights protection of Indigenous People should hence also be reflected in the UN drug policies, conventions and organisations working in the area. In no situation should it be allowed to let human rights of Indigenous People become a casualty of the *war on drugs*. Neither should cultural differences, traditional cultural practices, customs and beliefs of Indigenous People be undermined and violated in the course of that war.

It is about time to investigate the necessity of a reform of the Single Convention in order to put it in line with the human rights provisions of the UN. It is about time to stop stigmatizing and criminalizing Indigenous People on grounds of their traditional cultural existence, on grounds of their identity, on grounds of them simply being themselves. It is about time to internationally acknowledge the human right of all peoples to self-determination and it certainly is about time to revise the international drug control provisions in light of the coca leaf. Not only will the Indigenous People benefit tremendously from changes in the international drug conventions and policies (in line with indigenous rights), but so will the international community as a whole²³⁷. Because: *When Indigenous Peoples Win, The Whole World Wins* (Littlechild 2009: 372).

²³⁷ In terms of international peace and security, peaceful co-operation, cultural diversity and intercultural mutual respect, and friendly relations between all entities of the international community.

8. Tentative ideas for an international recognition of traditional coca consumption and use as an indigenous cultural and identity right

At this final stage, I will give tentative proposals (ideas) of (indigenous) human rights-based drug policy reforms, which could be of interest for a further debate. These ideas are classified in three sections, but it is important to stress that I do not intend to reflect any valuation with this categorization. The content should merely be regarded as the final output of my discussion. Because, given the fact that the *drugs and human rights* - debate is per se a dynamic one, it was in my personal interest to complete this paper with suggestions for future disputes and discussions.

Legalisation: Full legalisation of the coca leaf would require a decriminalisation on an international scale. This, like outlined in the analysis of the drug conventions, would postulate a deletion of the coca leaf from the Schedule I list of prohibited substances, established through the Single Conventions. Despite of the bureaucratic, political and practical obstacles for its implementation, there still exists at least the possibility of this legal step to be performed. The elimination from the list would in the following establish an opening for marketing of natural coca products and thus legally allow coca (leaf) consumption worldwide. Support for the legalisation argument was and is expressed by several distinct individuals and countries. (The Plurinational State of) Bolivia has been the most active defender of a decriminalization of coca in the last years, but has certainly not been the only actor voicing legalization claims. Indeed, several authorities who have been directly involved with the U.S.-dominated *war on drugs* argued in favour of this policy option²³⁸ (see Laserna 1997: 167). Experts in the region have additionally advised their governments (Peruvian and Bolivian) to promote the beneficial effects of the coca leaf, not only internationally but also domestically, in order to achieve a production of high-quality coca products and hence, firstly, establish a stronger licit market for coca (domestically) and secondly, proof to the international community that coca has indeed harmless, positive properties (see El Comercio 2008). Above all, legalisation – although certainly equalling a major step for the rights and interest of Andean Indigenous People – would create a new commercial sector for those countries where coca can be cultivated. With this, the motives behind a promotion for legalisation include inter alia an objective for industrialization under presumably capitalistic ideas. Nonetheless, without any doubt, the opening of markets for natural coca products would significantly

²³⁸ Including, for instance, former Secretary of State under the Reagan administration, George Schultz, journalist William Buckley and former Surgeon General Jocelyn Elders.

contribute to the alternative (therapeutic) medicines branch worldwide. A special protection of the human rights of Indigenous People in the Andes can not be regarded as fully covered by this solution, but the stigmatizing and discriminating international policy on coca would come to an end.

Partial legalisation: Means for a partial legalisation can include inter alia: The establishment of special provisions for Indigenous People and/or of special provisions on the precedence of human rights over all other rights and principles and/or changes in the language of the conventions and of INCB's policies. The first option could be effectuated through an international convention or agreement regarding international legalisation of coca, its natural products and its cultivation, *only* for indigenous individuals (to be seen as a collective right though) who are members of communities, to which the traditional practices related to coca are an inherent part of their culture and identity. This provision could even be established within the existing drug policy framework, by inter alia, amendment to the Single Convention²³⁹. It would represent a solution to the problem which is very much human rights-based and human rights-orientated; there are *de facto* no other people claiming a right to cultural coca practices (like i.e. *accullico*) than Andean Indigenous People. Thus, to avoid a wrong utilization of the legalisation argument, the beneficiaries of a legalisation should indeed be first and foremost the Indigenous People.

The second option has at its core the same objective and outcome like the first one, but would target the debate from a different rhetoric angle. By formally establishing the precedence of human rights over all other rights, the outcome of this provision would result in extra protection of Indigenous People in the course of the *war on drugs*, for reasons mentioned above. In spite of this precedence already being solidly grounded in International Law (via for instance the UN Charter provision), an additional foundation in the drug conventions might be of interest for its full application.

And finally, the third mean for partial legalisation or at least recognition of the coca leaf as a traditional cultural good, is a legally founded change in language of the drug conventions and the respective INCB policy rhetoric. This possibility for reform is probably the least powerful one with respect to the special protection of Andean indigenous rights, yet it is probably also the easiest one to get through with. The headstone of this idea is a rejection of stigmatising language in international policy debates. The UN, as representing the international community

²³⁹ Although, from a realistic point of view, this seems incredibly unlikely.

as a whole, should take the lead in culturally sensitive and adequate, human rights-based language in all its segments and branches. Especially the INCB has to consider a revise of its problematic and unhelpful language in international drug policy debates (see BFDPP 2008: 44 *f.*). With respect to the right of Indigenous People, certain key aspects of tolerance and respect should be established in international realms. This could be performed in similar ways like it has been done with gender and human rights-mainstreaming (in fact, it is part of human rights-mainstreaming)²⁴⁰ - gradual enforcement of indigenous human rights-based policies and wording.

Special provisions for Andean indigenous migrant communities (de facto legalisation for Indigenous People): One proposition is to establish special provisions for Andean migrant communities, living outside the Andean region in countries where traditional coca consumption is not allowed, and who do not have the means to purchase coca leaves due to their international penalization. The people belonging to such communities should have the right to access and consumption of coca leaves, because they represent an important, highly relevant and integral part of the traditional Andean culture (see Jelsma 2009). They should have the right to freely decide themselves whether to continue with that practice outside their traditional territories or not. This provision would require the partial legalisation of import and export of natural coca leaves and coca products for traditional indigenous consumption and use, which could be established through one international, or several bi- and multilateral agreements.

²⁴⁰ By way of comparison, in 1997 former UN Secretary General Kofi Annan explicitly stressed the need to mainstream human rights in all parts of the UN system (policies, programmes, action plans etc.), as a cross-cutting issue (see A/51/950 1997: 8, 26 and 64 - 67).

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Abstract (German)

Indigene Völker finden sich beinahe täglich mit dem Umstand konfrontiert, dass sie weiterhin um gewisse Grund- und Menschenrechte kämpfen müssen, meist aufgrund der Tatsache dass sie in den Ländern, die sie bewohnen, eine Minderheit darstellen. Dies in Kontroverse zu der Tatsache, dass ihnen, auf Basis des Umstandes dass sie nicht eine dominante Gruppe in der Gesellschaft darstellen²⁴¹, zusätzlich zum allgemeinen Menschenrechtsschutz weitere, spezielle Rechte und Schutzpflichten von Seiten des Staates zustehen.

Besonders im Bereich der kulturellen, traditionellen und religiösen Rechte finden mit Regelmäßigkeit Rechtsverletzungen statt oder treten juristische Kontroverse auf, die Personen indigener Gruppen an einer freien und friedvollen Ausübung ihrer eigenen Kultur, ihrer Lebensform, hindern. Ein Konfliktbeispiel in diesem Zusammenhang ist die Koka-Pflanze, einerseits ein traditionelles, der Kultur inhärentes, Objekt der indigenen Kultur in den Anden, andererseits ein international pönalisierter und gefürchteter Rohstoff.

In dieser Arbeit ist es mein Ziel, ebendiese Dichotomie zu diskutieren, die aktuellen Debatten aufzuzeigen, beständige Bemühungen zur Legalisierung des Koka-Blattes von Vereinen, Organisationen und Vertretern indigener Völker, die sich für eine Streichung des Koka-Blattes von der Liste verbotener Substanzen der Drogen- Rahmenkonvention von 1961 bemühen, zu kanalisieren. Eine zentrale Argumentationslinie in dieser Hinsicht wird sein, dass Vertreter indigener Völker, wie auch Menschenrechtsvertreter, diese Streichung fordern, da ein Verbot des Koka-Blattes eine Verletzung der traditionellen, kulturellen und Identitäts-Rechte der indigenen Völker des Andenraumes repräsentiert und die Pflanze, als Kernelement der andinen Kultur, einen differenzierteren Status im internationalen Gesetz innehaben sollte. Indigene Völker des Andenraumes klagen, dass ihre spezifischen Menschenrechte verletzt werden, da ein inhärenter Teil ihres Seins auf internationaler Ebene unterdrückt und stigmatisiert wird, anhand der Drogengesetzgebung der Vereinten Nationen in diesem Bereich, und der respektiven Auswirkung auf regionaler Ebene.

Im Gegensatz dazu stehen die für die internationale Drogenkontrolle verantwortlichen Organe der UNO, wie etwa das International Narcotics Control Board (INCB), das in seinem letzten Statement in dieser Angelegenheit seinem rigiden Ansatz treu bleibt und weiterhin keinerlei Koka in keinerlei Form oder Art toleriert. Diese Politik kommt praktisch einer Illegalisierung

²⁴¹ Mit ein paar Ausnahmen, man denke beispielsweise an den plurinationalen Staat Bolivien.

des Koka gleich und verbietet jegliche Kommerzialisierung der Pflanze oder ihrer Blätter außerhalb der traditionellen Anbaugebiete: Bolivien und Peru²⁴².

Als Diskussionsbasis, sollen einerseits die relevanten internationalen Drogenkonventionen²⁴³ und –Abkommen, und andererseits die internationalen Gesetze über die Rechte indigener Völker²⁴⁴, aber auch die allgemeinen Menschenrechtstexte, analysiert und in Beziehung gesetzt werden. Ein Ziel wird sein, die relevanten Diskrepanzen, Dichotomien und Widersprüchlichkeiten im Hinblick auf die Unterdrückung des Koka-Blattes, der Drogenbekämpfung und die geforderte Garantie des Menschenrechtsschutzes und der persönlichen Freiheiten zu thematisieren und in den Kontext dieser Arbeit zu setzen.

Die zwei Andenstaaten Peru und der plurinationale Staat Bolivien gehören zu den Hauptproduzenten des Kokablattes weltweit. Beide Staaten haben eine vergleichsweise hohe Bevölkerung indigener Gruppen (Völker), vor allem im andinen Hochland. Kürzlich fanden im plurinationalen Staat Bolivien signifikante Verfassungsänderungen statt, die die politische Gewichtung und Lage der indigenen Völker im Staat und die Thematisierung der Koka-Pflanze als nationales Kulturgut weitgreifend veränderten²⁴⁵. Diese aktuellen Entwicklungen werden in ihren relevanten Kontexten auch in diese Arbeit einfließen. Weiters ist es meine Absicht, eine ausführliche und verständliche Genesis der Koka-Pflanze und ihres Bedeutungsspektrums auf nationalem wie auch internationalem Level vorzulegen, wobei besonders auf die mythologische Entstehungsgeschichte des Blattes, seiner kontemporären Bedeutung, der traditionellen Nutzungsformen und deren kulturelle Relevanz eingegangen werden wird. In dieser Hinsicht werden auch Studien zu den nutritiven Eigenschaften der Pflanze und Debatten um ihre negativen und positiven Eigenschaften auf den menschlichen Organismus analysiert werden, wofür Daten und Ergebnisse aus unabhängigen wissenschaftlichen Untersuchungen herangezogen werden, jedoch unter Berücksichtigung von Erfahrungsberichten indigener Vertreter (Praktizierende) selbst. Ein vorrangiges Ziel in diesem Zusammenhang ist, eine klare Abtrennung zwischen der natürlichen Pflanze (dem Rohstoff) und der verarbeiteten Substanz Kokain zu schaffen.

²⁴² Und auch zu einem geringeren Anteil Kolumbien und Ecuador, diese stehen jedoch in der Diskussion der traditionellen Rechte indigener Völker nicht im Vorrang.

²⁴³ Die Single Convention on Narcotic Drugs 1961, die Convention on Psychotropic Substances 1971 und die United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 und andere regionale Konventionen und Abkommen.

²⁴⁴ Der United Nations Covenant on Social, Economic and Cultural Rights, die Declaration on the Rights of Indigenous Peoples (2007) und die ILO Convention 167, sowie weitere regionale und thematische Abkommen.

²⁴⁵ Besonders der Bolivianische Präsident Evo Morales Ayma verkörpert eine starke Rolle im Lichte dieser Debatte und kämpft auf der internationalen Ebene um die Anerkennung des Koka-Blattes und dessen Besserstellung in der internationalen Gesetzgebung).

Primäres Ziel dieser Arbeit ist es aufzuzeigen, dass einige schwere Menschenrechtsverletzungen an indigenen Völkern im Zuge des und mit Legitimation durch den *war on drugs* begangen werden. Besonders die kollektiven kulturellen und traditionellen, sowie auch die wirtschaftlichen Rechte indigener Völker in den Anden werden noch immer auf diverser Ebene durch die internationale Drogengesetzgebung und deren Implementierung verletzt, sei es durch Stigmatisierung der traditionellen Lebensweise und Rituale, durch Behinderung eines möglicherweise durchaus lukrativen Weges zur Subsistenzwirtschaft oder direkte gewalttätige Übergriffe auf Individuen in den Anbaugebieten.

Curriculum Vitae

PERSONAL INFORMATION

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