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Bolivia and Coca: Law, Policy, and Drug Control

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NOTES

Bolivia and Coca: Law, Policy, and Drug Control

ABSTRACT

International drug trafficking looms large in the future of international relations. Although drug production and consumption can no longer be labeled as problems belonging to a few discrete nations, some countries' identities in the international arena are still shaped by their perception as drug-producing nations. Bolivia is one such country. Coca and cocaine have dominated its modern history and will continue to dominate its future. Bolivia's experience, however, is representative of not only other Andean nations' struggles with the drug epidemic, but of the international community's struggle with drug trafficking.

This Note sheds light on the legal tools to address international drug trafficking. Bolivia's history of coca production, use, and legislation is used as the backdrop to today's perplexing international drug situation. Also, this Note analyzes international involvement in Bolivia, focusing on U.N. responses to drug trafficking. The United States currently dominates this hemisphere's action against cocaine trafficking, inspiring sharp criticism from other nations for its unilateral legal action. This Note concludes that only a multilateral approach, with increased involvement by Andean nations and the entire Latin American region, will solve the current international drug crisis.

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I. INTRODUCTION

Centuries mark the history of the relationship between the Bolivian people and coca, the principal ingredient of cocaine. Ancient Indian traditions used the coca leaf in many facets of cultural life, yet it never gained the notoriety of the modern scourge of cocaine. United States-led international concern over illicit narcotics trafficking has transformed Bolivian foreign relations, economics, and internal politics, and it continues to shape Bolivia's future and reflections about its past.

Bolivia is one of the Andean nations targeted by the U.S. "War on Drugs,"¹ escalated by Presidents Reagan and Bush.² As

1. In 1973, President Nixon declared an "all-out, global war on the drug menace." Steven B. Duke, *Drug Prohibition: An Unnatural Disaster*, 27 CONN. L. REV. 571, 574 (1995) (quoting President's Message to Congress Transmitting Reorganization Plan No. 2 of 1973, Establishing a Drug Enforcement Administration, H.R. Doc. No. 69 (1973)).

cocaine became a problem for the United States, so too did it become a problem for Bolivia. Since the 1980s, the United States has remained heavily involved in fighting an international "war" against drugs,³ especially against cocaine in the Andean nations of Bolivia, Peru, and Colombia.⁴ Since the advent of the "war," however, drug supplies have increased substantially, both in the United States and in the world market. The international drug trade generates an estimated \$400 to \$500 billion annually.⁵ From 1984 to 1994, coca production nearly doubled, although the United States spent billions of dollars on narcotics-control assistance to Bolivia, Colombia, and Peru.⁶ While the Bolivian government has cooperated with the U.S. anti-drug struggle,⁷

2. Presidents Reagan and Bush sought to combat the U.S. drug problem through increasingly international means. Specifically, their administrations attempted to stop drug smuggling into the United States by strengthening interdiction efforts. Mathea Falco, *Passing Grades: Branding Nations Won't Resolve the U.S. Drug Problem*, FOREIGN AFF., Sept. 19, 1995, at 15, 16 [hereinafter Falco, *Passing Grades*]; see *infra* notes 166-69 and accompanying text.

3. Since 1981, the United States has spent \$23 billion on international drug control. Mathea Falco, *U.S. Drug Policy: Addicted to Failure*, FOREIGN POLY., Mar. 22, 1996, at 120, 124 [hereinafter Falco, *U.S. Drug Policy*].

4. These countries are known as "source countries" in U.S. policy terms, as they contribute the largest share of cocaine to the world and U.S. cocaine consumers. Falco, *Passing Grades*, *supra* note 2, at 16-18. Bolivia, Peru, and Colombia together produce 90% of the world's cocaine. Recent reports show that other Latin American countries, such as Ecuador and Brazil, are also involved in the illicit production and transport of coca and cocaine. Most cocaine production, however, still takes place in Bolivia, Peru, and Colombia. *Id.* at 18-19. Although the Clinton Administration attempted to shift funds from interdiction programs to programs aimed at disrupting the production of drugs at their sources in Colombia, Peru, and Bolivia, funding for interdiction and source country programs decreased from \$2.6 billion in 1992 to \$1.6 billion in 1995. *Id.* at 17. The source country strategy has been widely supported, however, and Congress recently increased the programs' budgets. Richard J. Newman, *Unwinnable War*, U.S. NEWS & WORLD REP., Nov. 4, 1996, at 40.

5. The Washington-based Freedom House reported that the illicit drug trade was a "global infestation by a force that has either overrun, outrun or outflanked every U.S. and international attempt to control it." John Omicinski, *Wealth of Booming Drug Trade Rivals that of Oil Industry*, COURIER J., Nov. 4, 1996, at 1A available in LEXIS, News Library, BUSDTL File. The report used estimates from the U.N. and Interpol, and found that the illegal drug trade accounted for between 10% and 13% of all international trade, greater than the international trade in oil. *Id.*

6. Falco, *U.S. Drug Policy*, *supra* note 3, at 124. Drug prices in the U.S. have since dropped, discouraging policy efforts aimed at increasing prices to discourage demand. *Id.* at 124-25. Cocaine prices have dropped by two-thirds since 1981, and the administrator of the Drug Enforcement Agency (DEA) Thomas Constantine said that "drug availability and purity of cocaine and heroin are at an all-time high." *Id.*

7. Bolivia's cooperation is subject to various interpretations, however. Many critics of the United States international drug control efforts note that Bolivia's cooperation stems largely from economic aid that is vitally necessary for

coca production has not diminished. Meanwhile, the problem of U.S. cocaine consumption continues to demand a solution.⁸

While some critics believe the international anti-drug effort is at a standstill, legal mechanisms remain in place and new projects continue.⁹ Although the Clinton administration focuses more resources than previous administrations on treatment rather than enforcement, substantial U.S. funding of overseas source country programs still supports the war against drugs in Latin America. The Andean nations of Peru, Bolivia, and Colombia continue to lead the world in cocaine production,¹⁰ while the United States leads the world in cocaine consumption.¹¹

its struggling economy. See Kevin Healy, *The Role of Economic Development: Policy Options for Increase Peasant Participation in Peru and Bolivia*, in *DRUGS AND FOREIGN POLICY* 131 (Raphael F. Perl ed., 1994) (describing the role of economic development in relation to international cocaine trafficking and drug policy in Peru and Bolivia); see also Eduardo A. Gamarra, *U.S.-Bolivia Counternarcotics Efforts During the Paz Zamora Administration: 1989-1992*, in *DRUG TRAFFICKING IN THE AMERICAS* 217 (Bruce M. Bagley and William O. Walker III eds., 1994) (arguing that Bolivian counter-narcotics policy reflects external forces and pressures).

8. The United States has an estimated eight million cocaine addicts, and 60% of global drug consumption occurs in the U.S. H.P. Klepak, *The International Drugs Trade: There's Room for All*, *JANE'S INTELLIGENCE REV.-YEAR BOOK*, Dec. 31, 1994, at 25, available in LEXIS, News Library, JANDEF File. American consumption of cocaine has generally remained constant at about 300 tons per year, or 300 million one-gram packets. Newman, *supra* note 4, at 40. But see Falco, *U.S. Drug Policy*, *supra* note 3, at 126-27 (estimating that the United States consumes a relatively small portion of the worldwide drug production, including less than one-third of the total global cocaine production).

9. On Nov. 6, 1996, the Bolivian Chamber of Deputies ratified a new extradition treaty with the United States, which was signed in 1995. *Bolivia Signs Extradition Treaty with U.S. to Demonstrate Cooperation in Drug War*, *NOTISUR-LATIN AM. POL. AFF.*, Nov. 22, 1996, available in LEXIS, Market Library, IACNWS File [hereinafter *Bolivia Signs Extradition Treaty*]. The treaty will allow extradition of persons indicted in the country making the request, or persons who have been convicted or sentenced for crimes covered in the agreement. *Id.* Through the treaty, as well as other recent efforts, Bolivia has shown its willingness to cooperate with the United States in its war against drugs. *Id.*

10. See *supra* note 4 and accompanying text. Throughout the 1980s, Colombia was the control center for cocaine production and trafficking and only a minor producer of the coca leaf itself. Klepak, *supra* note 8. Colombia recently replaced Bolivia, however, as the second largest producer of the crop behind Peru. *Id.*

11. Western Europe has increased its levels of cocaine consumption as well. Consumption and trafficking of illicit drugs increased throughout the 1980s in the United Kingdom. In 1985, the House of Commons Home Affairs Committee expressed concerns over the levels of cocaine abuse in the United States: "Unless immediate and effective action is taken, Britain and Europe stand to inherit the American drug problem in less than 5 years. We see this as the most serious peace time threat to our national well being." William C. Gilmore, *International Action Against Drug Trafficking: Trends in United Kingdom Law and Practice Through the 1980's*, 17 *COMMONWEALTH L. BULL.* 287, 289 (1991) (quoting House of Commons, Home Affairs Committee, *Misuse of Hard Drugs (Interim Report)*, H.C.

The United States also leads the international community in protesting the illicit production and trafficking of cocaine, and the supply-side international strategy still garnishes support among the U.S. public.¹²

Bolivia's situation is representative of all the Andean countries' struggles with the cocaine trade. This Note uses Bolivia as a model to evaluate the legal mechanisms available to address the international drug trafficking problem. Part II traces the history of coca production, use, and legislation in Bolivia to shed light on part of the backdrop against which the international drug effort must be viewed. Part III explains the international involvement in Bolivia, including the international drug problem and the United Nations (hereinafter U.N.) response to it. Part IV evaluates this hemisphere's action against cocaine trafficking, focusing on U.S. involvement, bilateral treaties, and regional agreements. Part V suggests possible alternatives in law and policy for addressing the coca issue in Bolivia. The current international approach to cocaine trafficking is failing. This Note concludes that only a multilateral approach, with the greatest involvement by the Andean nations, will approach the necessary regional solution to the drug crisis.

II. COCA IN BOLIVIA

To understand the complex framework of Bolivia's coca production and subsequent international concerns over it, coca itself must be considered as one factor among many. Bolivia's cultural, political, and economic traditions have allowed the coca industry to amass a strength rivaled only by international demand for coca and cocaine. Today, regulation of coca production permeates Bolivia's international relations.

399, 1984-85, para. 2). In 1989, the Home Office said that "the perceived threat from cocaine has materialised." *Id.* Since 1992, the European Community has begun to coordinate its police and military activities against the illicit drug trade. Klepak, *supra* note 8. The European Union recently announced that nations that consume narcotic drugs need to help stop their production by encouraging alternative crops. The European Union embarked on such a mission by signing a 30 million European currency units (Ecus) project with Bolivia, the first 19 million of which will go toward alternative crop development. *EU to Give Bolivia 30 Mln Ecu to Fight Drugs*, Reuters N. Am. Wire, Apr. 8, 1997, available in LEXIS, News Library, TXFNWS File.

12. The supply-side strategy focuses on decreasing the supply of drugs overseas in an attempt to lower the amount of illegal drugs entering the United States. See *infra* notes 163-87 and accompanying text.

A. Does Bolivia Have a Cocaine Problem?

This question can be answered both in the affirmative and the negative. Many Bolivians would respond that Bolivia has the problem of pressure imposed by the United States to curb coca production because of the U.S. cocaine epidemic. Domestically, however, cocaine abuse does not appear to pose a serious problem for the Bolivian population.¹³ Yet, narco-trafficking activities threaten Bolivia's political and economic stability.

Bolivia is the poorest country in South America, and, among Latin American countries, its poverty level is second only to that of Haiti.¹⁴ With a per capita income of \$770 a year, many Bolivian farmers have discovered a profitable industry in coca production, which yields about \$475 an acre annually.¹⁵ In contrast, crops such as bananas and grapefruit average from \$35 to \$250 a year, if buyers exist.¹⁶ Although coca has been cultivated for centuries, the illicit coca phenomenon in Bolivia has existed, arguably, for only the last couple of decades.

B. The Evolution of Coca in Bolivia

Coca has been used in Bolivia for centuries, but not in the concentrated form of powder or rock cocaine that has given the coca leaf international notoriety in the last twenty years. Rather, ancient rituals and traditions involved chewing the coca leaf (*acullico*)¹⁷ or drinking it in the form of tea (*mate de coca*). The Inca kings and nobility chewed coca leaves and the practice

13. Cocaine use in Bolivia is not even the subject of the majority of drug control policy options, although Bolivia appears to have suffered increased cocaine-dependence between 1976 and 1987. In 1976, cocaine dependency cases represented about 10% of all medical cases involving drug use; by 1987, the proportion had increased to 33%. María Elena Medina-Mora & María del Carmen Mariño, *Drug Abuse in Latin America*, in *DRUG POLICY IN THE AMERICAS* 45, 50 (Peter H. Smith ed. 1992) (citing M. M. de la Quintar, *Informe sobre el consumo de sustancias psicoactivas en La Paz, Bolivia*, SALUD PUBLICA (1988)). But see Falco, *U.S. Drug Policy*, *supra* note 3, at 126-27 (stating that the U.S. cocaine market absorbs less than one-third of total global production).

14. *Bolivia's Debt*, FIN. TIMES, Apr. 4, 1997, at 13, available in LEXIS, News Library, FINTIME File.

15. Falco, *U.S. Drug Policy*, *supra* note 3, at 126.

16. *Id.* Even when coca prices are depressed, many farmers still find it easier to market coca leaves than bananas or pineapples. David LaGessee, *U.S., Bolivia Cite Progress in Stopping Coca Farmers; But Many Grow It Despite Anti-Drug Aid, Military Raids*, DALLAS MORNING NEWS, July 25, 1996, at 1A, available in 1996 WL 10967387 [hereinafter LaGessee].

17. COCA AND COCAINE: AN ANDEAN PERSPECTIVE 1-2, 6 (Felipe E. Mac Gregor ed., Jonathan Cavanagh & Rosemary Underhay trans., 1993) [hereinafter Mac Gregor].

became widespread, especially among highland Bolivians and Peruvians.¹⁸ Coca remained a valuable commodity throughout the Spanish invasion in the sixteenth century.¹⁹ During colonial times, coca was used to pay slaves in the tin and silver mines.²⁰

Many traditions involving the coca leaf continue among the indigenous Bolivian populations, which consist mainly of Aymara and Quechua Indians.²¹ Coca remains an integral part of Andean Bolivian culture. The leaf is used for medicinal purposes,²² as an appetite and thirst suppressant,²³ to counter the effects of altitude sickness,²⁴ and often as the central focus of religious and cultural rituals.²⁵ In most rural areas of Bolivia, workers carry

18. RENNELAER W. LEE III, *THE WHITE LABYRINTH: COCAINE AND POLITICAL POWER* 24 (1989).

19. The Spanish conquistador Francisco Pizarro destroyed the Inca Empire in 1535. Prior to this, the Incas had built the largest indigenous empire in the Americas. The Inca Empire included modern day Chile, Peru, Bolivia, and Ecuador. MARK A. BURKHOLDER & LYMAN L. JOHNSON, *COLONIAL LATIN AMERICA* 11-14 (1990). Previously, the Incas had overtaken the Aymara Indians, whose culture flourished between the seventh and tenth centuries. *Id.* at 312. Bolivia gained its independence from Spain in 1825 and took its name from famous leader Simón Bolívar. *Id.*

20. Mac Gregor, *supra* note 17, at 1-2.

21. Bolivia today is 55% indigenous (30% Quechua, 25% Aymara), 25-30% *mestizo*, or mixed Indian and Spanish descent, and 5-15% European. *WORLD FACTS AND MAPS* 85 (Rand McNally ed., 1996). Although the official language is Spanish, most of the indigenous populations also speak either Aymara or Quechua. *Id.*

22. The leaves of coca are used in ointments, bathing solutions, and massages, and are believed to cure various illnesses. HARRY SANABRIA, *THE COCA BOOM AND RURAL SOCIAL CHANGE IN BOLIVIA* 38 (1993).

23. With over 65% of the nation in poverty, malnutrition and hunger are serious problems in Bolivia. Mac Gregor, *supra* note 17, at 2. The stimulant found within the coca leaf acts to suppress that hunger. *Id.* Although once believed to contribute to the persistence of malnutrition, coca does not harm the nutrition of its users, according to recent studies. *Id.*

24. Most of the indigenous Bolivians live on the *Altiplano* (high Andes), in the high and dry areas of the Andes Mountains. Many inhabitants of the *Altiplano* area live as much as fourteen thousand feet above sea level. Side effects of such high altitudes include shortness of breath, dizziness, nausea, and headaches because of low oxygen levels. Coca acts as a stimulant and increases energy levels, while suppressing the effects of the altitude. SANABRIA, *supra* note 22, at 38.

25. Many rituals, descended from ancient peoples such as the Incas, use coca leaves in common pipes smoked during prayers and ceremonies. The leaf is often chewed throughout such religious ceremonies and is believed to hold higher powers. Many marriage rituals also require gifts of coca: "The offering and use of coca also cements other social obligations, functions as an index of cultural identity, and serves as a medium of communication between humans and supernatural beings." *Id.*

little pouches (*k'intus*) of coca leaves in their pockets.²⁶ Chewing coca is considered an important social skill; adults gather to chew it after meals and pause for coca breaks.²⁷ Coca serves an economic role even without the cocaine industry, functioning as a medium of exchange and as a deferred payment in many parts of the Andes.²⁸

Throughout the 1970s, however, the cultivation of coca shifted from mostly traditional subsistence farming to massive export-oriented coca production. This shift was not a spontaneous change in agricultural practices on the part of Bolivian coca farmers (*cocaleros*); rather, it resulted from a combination of political, economic, and social factors. Politically, Bolivia is one of only four nations in Latin America to have sustained a popularly based revolution.²⁹ In 1952, the political group known as the Movimiento Nacionalista Revolucionario (National Revolutionary Movement) gained power after an urban revolt.³⁰ The new government made significant changes that affected the country in many ways. The government nationalized about eighty percent of Bolivia's main industry, tin. It also implemented comprehensive agrarian reform. Broad agrarian reform efforts divided the old hacienda system and distributed land to Indian farmers.³¹ As the old land structure collapsed, the working and peasant classes became politically mobilized.³² Increased political power and massive income redistribution allowed these classes to participate more in Bolivia's political life and exert more pressure on the government.³³

26. See CLARE HARGREAVES, *SNOWFIELDS: THE WAR ON COCAINE IN THE ANDES* 43 (1992). The middle classes of Bolivia's cities often view coca chewing as a dirty habit, but drink it in the form of tea (*maté de coca*). *Id.*

27. *Id.* See also CATHERINE J. ALLEN, *THE HOLD LIFE HAS: COCA AND CULTURAL IDENTITY IN AN ANDEAN COMMUNITY* (1988) (describing the ritual practices that revolve around the coca leaf in a Peruvian community of Quechua-speaking peasants).

28. See SANABRIA, *supra* note 22, at 38. Laborers in the agricultural and mining industries often utilize coca leaves both for consumption and exchange. *Id.*

29. The other nations that sustained revolutions were Mexico (1910-1920), Cuba (1959), and Nicaragua (1979).

30. See James M. Malloy, *Bolivia: An Incomplete Revolution*, in *LATIN AMERICAN POLITICS AND DEVELOPMENT* 362 (Howard J. Wiarda & Harvey F. Kline eds., 2d ed. 1985).

31. *Id.*

32. Between 1952 and 1956, Bolivia moved in a socialist direction because labor was very powerful. *Id.* at 372.

33. Agrarian reform remains an important issue in Bolivia. In August 1996, several indigenous organizations marched 900 kilometers from Santa Cruz de la Sierra to the capital of La Paz to protest an agrarian reform bill. *Bolivia: Social Problems Plague President Gonzalo Sanchez de Lozada's Government*, NOTISUR-LATIN AM. POL. AFF., Aug. 30, 1996, available in 1996 WL 8089432

Although the central government increased its formal powers after the 1952 revolution, the state remains weak against internal pressures.³⁴ Bolivia's weak central government can be traced historically to the Spanish colonial system and, more recently, to constant threats to its external and internal sovereignty.³⁵ While the Bolivian constitutional structures reflect the Spanish tradition, in which most political power resides in the chief executive and the administrative tools of the state, these branches have not been very powerful in Bolivia. The 1952 revolution furthered the lack of central political authority in Bolivia.³⁶

The weakness of Bolivia's central government can be explained by various factors. Relative to its size, Bolivia's overall population is small, mostly rural, and fragmented along racial, ethnic, and cultural lines. Also, Bolivia's dramatic topography divides it into three distinct regions, enhancing geographic and regional diversity, as well as inter-regional rivalry.³⁷ The lack of strong state institutions, coupled with regional diversity and autonomy in parts of Bolivia, arguably set the stage for later drug production to prosper.³⁸

Economic factors also contributed to the rise in export-oriented coca production in Bolivia. Since the Spanish colonial era, Bolivia's economy has been based on the export of minerals

[hereinafter *Social Problems*]. The bill the government sent to Congress did not include the proposed changes resulting from recent negotiations between the government and *campesino* and indigenous groups. See *id.*

34. See Malloy, *supra* note 30, at 372.

35. Because Bolivia shares its borders with five other nations (Peru, Chile, Argentina, Paraguay, and Brazil), its external sovereignty has been threatened by various border disputes, all of which Bolivia has lost. *Id.* at 364. In the War of the Pacific, 1879-1882 (Bolivia and Peru versus Chile), Bolivia lost its seacoast and became landlocked. *Id.* In its defeat in the Chaco War with Paraguay, 1932-1935, Bolivia set its own stage for the 1952 Revolution and the future involvement of the military. *Id.* Bolivia's internal sovereignty has been threatened by a weak central state and powerful regional factions. *Id.*

36. See SCOTT B. MACDONALD, *MOUNTAIN HIGH, WHITE AVALANCHE: COCAINE AND POWER IN THE ANDEAN STATES AND PANAMA* 68 (1989). The MNR lost power to the military in 1964, and the military controlled Bolivian political life until 1982. Malloy, *supra* note 30, at 374-76. Some 70 political parties appeared, adding to the already large number of factions dividing central authority in Bolivia. *Id.* at 374.

37. The three topographical regions of Bolivia are the *altiplano* (high plain), the *yungas* (semitropical valleys), and the *llanos* (lowlands). The geographical diversity has added to the strong regional identity that many Bolivians feel. Thus, the central government is often not the national focus of Bolivian identity. Malloy, *supra* note 30, at 365.

38. See JAIME MALAMUD-GOTI, *SMOKE AND MIRRORS: THE PARADOX OF THE DRUG WARS* 5 (1992); MACDONALD, *supra* note 36, at 68-9.

to foreign countries.³⁹ The decrease in international market prices for tin and natural gas in the 1970s and 1980s led to the decline of the highland economy and to high rates of unemployment. Many workers migrated from the highlands to the Chapare, where coca cultivation offered jobs and profits.⁴⁰ During the 1980s, the illegal coca economy surpassed the traditional legal coca market, launching Bolivia into the international drug trade.⁴¹

Three areas of Bolivia yield most of its coca: the Yungas in La Paz, the Chapare in Cochabamba, and the Ypacani in Santa Cruz.⁴² Ideal coca-growing climates and extreme poverty in these rural areas make them prime regions for coca production. Continuing rural poverty, combined with a lack of economic opportunities in the cities, perpetuates coca production among rural farmers.⁴³ About forty-two percent of Bolivia's seven million people live in rural areas, and of these, an estimated eighty percent suffer extreme poverty, according to the U.N. Development Program.⁴⁴

39. Silver was the main export until the mid-nineteenth century. Malloy, *supra* note 30, at 365. Since the 1880s, tin has been the predominant export, although oil and natural gas have become important in the last 20 years. *Id.*

40. See MALAMUD-GOTI, *supra* note 38, at 10. The Chapare became an attractive location for unemployed tin miners from Postosí and Oruro and peasants from Cochabamba. *Id.* The cotton market also collapsed in 1975 and 1976, which led many rich cotton producers from Santa Cruz into the more profitable coca/cocaine enterprise. *Id.*

41. Bolivia's rise to notoriety was sparked by the "cocaine coup" of July 17, 1980, that brought the narco military command of General García Meza. MACDONALD, *supra* note 36, at 72. García Meza's military dictatorship ruled until 1981, when a coup ousted the regime from power and Bolivia returned to a democratic form of government. *Id.* at 75-6.

42. Mac Gregor, *supra* note 17, at 3. In 1988, the estimated total area planted with coca in Bolivia was 60,956 hectares, with 51,198 in Cochabamba; 8,913 in La Paz; and 845 in Santa Cruz. *Id.* The Yungas is in the department of La Paz on the eastern slopes of the Andes. The Chapare is a large area in the department of Cochabamba, formed by parts of the provinces of Chapare, Carrasco, and Arani. *Id.* at 3-4. In 1985, the Chapare was the main coca-growing region of Bolivia, producing between 90% to 95% of Bolivia's coca. SANABRIA, *supra* note 22, at 41.

43. See Pat Hynds, *Latin America: Growing Consensus that U.S. Anti-Drug Policy is Not Working*, NOTISUR-LATIN AM. POL. AFF., Feb. 9, 1996, available in 1996 WL 8089348. Many *campesinos* now growing coca in the Chapare worked as miners in the government-owned tin and silver mines until 10 years ago. *Id.* In 1985, the world price of tin plummeted and many miners could not find work. Many former miners then migrated to the Chapare and began growing coca. *Id.* Although very wealthy people also grow coca, the risks inherent in illicit coca production have been increasingly shifted from the wealthy to the *campesinos*. The majority of profits are not earned in the production phase, but in the later trafficking stage. LaGesse, *supra* note 16.

44. See *Social Problems*, *supra* note 33.

Primarily in response to U.S. pressures, Bolivian police have recently escalated enforcement against illegal coca cultivation.⁴⁵ But the willingness of Bolivia's government to cooperate with the United States by punishing the coca growers has resulted in violent confrontations in the Chapare.⁴⁶ Many coca growers not only claim the right to grow coca because the plant was sacred to their ancestors, but also claim the right to grow coca to earn a living.⁴⁷ Coca growers have formed a large organized political force and frequently protest government efforts to eradicate or reduce coca cultivation.⁴⁸ Bolivia allows legal coca production outside the Chapare, demonstrating the government's recognition and acceptance of traditional licit uses of coca. Most coca is grown in the Chapare, however, where the government has declared most coca plants illegal.⁴⁹

C. Regulation of Coca in Bolivia

Bolivia's government has found international cooperation with drug enforcement efforts a political and economic necessity. Politically, Bolivia needs to maintain international favor, especially with the United States. As a landlocked country and a relatively new and fragile democracy,⁵⁰ Bolivia cannot afford to

45. See *infra* Part IV.

46. LaGessee, *supra* note 16. Human rights groups have focused attention on the Bolivian government's use of force in the eradication of coca. Between April and May of 1997, three coca growers and two police officers were killed in clashes over eradication of drug crops in the Chapare region. *Four Killed in Bolivian Drug Clash*, UPI, Apr. 18, 1997, available in LEXIS, News Library, UPI File; *One Killed, 14 Injured in Clash Over Coca Fields*, RECORD, May 9, 1997, available in 1997 WL 6886983. The government blames criminal drug trafficking groups, while the coca growers blame police for what they considered "a massacre." *Four Killed in Bolivian Drug Clash*, *supra*; *One Killed, 14 Injured in Clash Over Coca Fields*, *supra*. In 1995, four civilians were fatally shot and at least a dozen were injured by gunfire during confrontations between *cocaleros* and police. According to Human Rights Watch/Americas, "The farmers fought to protect their livelihood. The heavy hand of U.S. drug enforcement has fallen on the peasant farmers of the Chapare." LaGessee, *supra* note 16.

47. LaGessee, *supra* note 16. Numerous protests by *campesinos* defending their right to grow coca leaf have occurred in La Paz. Hynds, *supra* note 43.

48. See *Social Problems*, *supra* note 33. Coca growers have voiced their opposition to government eradication efforts, which have led to human rights violations by anti-drug personnel, especially in the Chapare coca-growing region. *Id.* "The government is trying to take away the coca growers' lands, because they consider planting coca a subversive act against the state . . . [and we must protest] to prevent more human rights violations, stop the forced eradication of coca fields, and stop our land from being taken," said Evo Morales, leader of the organized coca growers. *Id.*

49. LaGessee, *supra* note 16; see *infra* note 76 and accompanying text.

50. After a series of military dictatorships, Bolivia regained a democratic form of government in 1981. MACDONALD, *supra* note 36, at 75-6.

lose international esteem, already diminished since the advent of cocaine trafficking concerns. Furthermore, the economic situation in Bolivia is bleak. Still recovering from the debt crisis of the 1980s and dependent on foreign aid for agricultural development and other economic revitalization programs, Bolivia has passed anti-drug laws to satisfy international demands.

1. The 1961 U.N. Single Convention: Coca's Demise

The 1961 U.N. Convention on Narcotics⁵¹ developed a set of norms and provisions to limit narcotic use to medical and scientific purposes. The Convention said that "addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind."⁵² The list of substances subject to control included both cocaine and the coca leaf. The traditional practice of chewing coca leaves was defined as an "undue use of drugs."⁵³ The Convention defined illicit traffic as "cultivation or trafficking in drugs, contrary to the provisions of this Convention"⁵⁴ and production as "the separation of opium, coca leaves, cannabis and cannabis resin from the plants from which they are obtained."⁵⁵ Thus, cultivating coca was itself deemed to be illicit trafficking, and the harvesting of coca was defined as illegal narcotics production.

The Convention stated that "coca leaf chewing must be abolished within twenty-five years from the coming into force of this Convention."⁵⁶ The Convention left individual countries to enforce the norms, but suggested eradication.⁵⁷ After ratifying the Convention, Bolivia passed a narcotics law in 1962, which did not include coca leaves as a narcotic, perhaps signifying resistance to international concern over coca. Later that year, however, a government decree ordered a census of coca plantations and prohibited new plantations.⁵⁸ In conformity with

51. Single Convention on Narcotic Drugs, Mar. 30, 1961, 18 U.S.T. 1407, 520 U.N.T.S. 204 (entered into force Dec. 13, 1964) [hereinafter 1961 Single Convention]. The 1961 Single Convention was ratified by the Bolivian government.

52. *Id.* at 1409, 520 U.N.T.S. at 204.

53. Mac Gregor, *supra* note 17, at 16.

54. 1961 Single Convention, *supra* note 51, 18 U.S.T. at 1410, 520 U.N.T.S. at 206.

55. *Id.* at 1410, 520 U.N.T.S. at 208.

56. *Id.* at 1429, 520 U.N.T.S. at 264.

57. "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." *Id.* at 1421, 520 U.N.T.S. at 238.

58. Mac Gregor, *supra* note 17, at 16-17. The Ministry of Agriculture also started a crop substitution program. Coca leaves were still not deemed a narcotic in Bolivia, however. *Id.* at 17.

the 1961 Convention, the Inter-Ministerial Narcotics Commission began a research project in 1966 to fight cocaine trafficking and to reduce and gradually eradicate coca plantations by replacing coca with other crops.⁵⁹ The research project also sought to reduce coca leaf chewing and to fight drug addiction within Bolivia, issues that have received less attention than coca production in recent years.⁶⁰

Bolivia created the National Office for the Control of Dangerous Substances (hereinafter DNCSP) in 1973, following the norms of the 1961 Convention.⁶¹ The United States also began to support Bolivian coca control in the 1970s. In 1974, as its own demand for cocaine began to increase, the United States financed an \$8 million pilot project to determine the feasibility of a long-term plan to reduce coca production in Bolivia.⁶² In 1977, 1978, and 1979, the United States and Bolivia signed several bilateral agreements in which the United States gave financial assistance for the DNCSP to combat cocaine production and trafficking.⁶³ In 1979, the Bolivian government passed a new law that failed to list coca leaves as illegal narcotic, but did prohibit new coca plantations and the expansion of registered ones.⁶⁴ Thus, although Bolivia complied with some provisions of international law, it resisted enacting anti-coca laws domestically.

On November 15, 1981, the Bolivian government enacted a law to Control and Fight Dangerous Substances, which allowed the Chapare-Yungas Development Project (hereinafter PRODES) to offer legal coca producers long-term credits and technical support to substitute other crops of similar profitability.⁶⁵ The

59. *Id.*

60. See *supra* note 13 and accompanying text; see also Mac Gregor, *supra* note 17, at 17.

61. Law No. 11245 created the DNCSP and established registration of coca growers and the "gradual, systematic, and planned reduction of coca leaf cultivation in the country, by substituting it with other crops as profitable or more so." Mac Gregor, *supra* note 17, at 17.

62. *Id.*

63. The financial contribution of the United States included \$11 million for agricultural development projects in the Yungas and the Chapare. *Id.* This then spawned the creation of the Chapare-Yungas Development Project (hereinafter PRODES), an inter-ministerial agency for crop substitution, with technical and financial support from the United States Agency for International Development (hereinafter USAID). *Id.* The PRODES legislation was revised in 1976, and established a Plan for Integrated Development, which restricted coca cultivation to legal demand levels. *Id.*

64. Law No. 16562 was passed on June 13, 1979, under the government of General Padilla Arancibia. *Id.* Registration is the national system in Bolivia for licensing legal coca crops. *Id.*

65. Law No. 18714 provided that the National Anti-Drug Traffic Council, through the DNCSP, would buy and sell the coca leaves, seeking a certain profit margin to balance supply and demand for traditional chewing, medical, and

law also established a state monopoly on the buying and selling of coca leaves and prohibited all coca plantations outside the departments of La Paz and Cochabamba.⁶⁶ The law did not reduce coca production, however. The state-controlled markets gathered only a small amount of legal coca and encouraged corruption and abuse, while offering lower prices to producers than the illicit traffickers' rates.⁶⁷ In 1985, the Bolivian legislature passed new Regulations for the Control of Dangerous Substances. The new regulations recognized all drugs listed in the 1961 Convention, including coca plants and leaves.⁶⁸

2. Ley 1008: The Law of Foreigners

The most prominent Bolivian anti-drug law, the Coca and Controlled Substances Law, Ley 1008,⁶⁹ was enacted by the Bolivian legislature on July 19, 1988. Ley 1008 was written with the assistance of the United States Agency for International Development (hereinafter USAID). The United States sought to ensure that narco-trafficking would be defined as a crime in Bolivia and that the growth of coca leaf cultivation would be stopped.⁷⁰ Although Ley 1008 was enacted largely in response to U.S. pressure to prohibit the production and marketing of coca, the law also formally recognizes the licit uses of the coca leaf.

Significantly, Ley 1008 first states that coca is a natural product from the subtropical departments of La Paz and Cochabamba, with ancient origins that derive from pre-Colombian Bolivian history.⁷¹ The law also allows for the cultivation of the coca leaf for agricultural and cultural use, as well as for the traditional use of coca for medicine and rituals in Andean communities.⁷² Ley 1008 explicitly differentiates between the natural state of coca, which produces no known negative health effects, and coca that has been chemically transformed into the cocaine alkaloid, which has dangerous psycho-physical and

pharmaceutical purposes. Coca producers had to sell their leaves at collection sub-centers, and transporting coca, except through the proper authorities, was banned. *Id.* at 17-18.

66. *Id.* at 18.

67. *Id.*

68. *Id.*

69. Ley del Regimen de la Coca y Sustancias Controladas: Ley 1008 (1988) [hereinafter Ley 1008]; see COCA-CRONOLOGÍA, BOLIVIA: 1986-1992, at 114 (Maria Lohman ed. 1992) [hereinafter COCA-CRONOLOGÍA]; see generally ABA, *Commentary on the Ley Del Regimen de la Coca y Sustancias Controladas*, 6 INTER-AM. LEGAL MATERIALS 278 (1995).

70. See ABA, *supra* note 69, at 280.

71. See Ley 1008, art. 1.

72. *Id.* art. 2.

biological health consequences and is used in the criminal drug trade.⁷³

Under Ley 1008, licit consumption of the coca leaf includes traditional social and cultural practices of the Bolivian population, such as the *acullico* (coca-chewing) and medicinal and ritualistic uses.⁷⁴ The production of the coca leaf to meet the legal demand is defined as necessary production, and subsistence farmers who cultivate coca for personal use are defined as legal producers.⁷⁵ Production surpassing the necessary amount is defined as excess production.⁷⁶ Conceding to U.S. demands, the law also requires the gradual eradication of coca through voluntary and forced removal of plants. While the law aims at annual targets of eradication of coca hectares, it requires international development assistance to realize these goals.⁷⁷ The law therefore recognizes the need for foreign aid not only to implement this law, but also to combat the economic conditions perpetuating the coca and cocaine trade in Bolivia.

In an attempt to tame the domestic tensions arising from domestic and international attacks on coca leaf cultivation, the anti-drug law includes a key concept of the agreement signed

73. *Id.* art. 3.

74. *Id.* art. 4. Other forms of licit use of the coca leaf that do not harm the body or lead to addiction/dependency will be the object of special regulation. *Id.* art. 5.

75. *Id.* art. 12.

76. *Id.* art. 6. Article 8 establishes three zones of production of coca in Bolivia: the zone of traditional production; the zone of excess production; and the zone of illicit production. The zone of traditional production encompasses the uses outlined in Article 4, *supra* note 74, and also restricts the areas in which coca may be cultivated for such purposes. Small coca-producing lands are permitted in the subtropical regions of North and South Yungas, Murillo, Muñecas, Franz Tamayo and Inquisivi of the Department of La Paz, and the Yungas of Vandíola, which includes part of the provinces of Tiraque and Carrasco of the Department of Cochabamba. *Id.* art. 9. The zone of excess production in transition is where the cultivation of coca is the result of spontaneous or directed colonization, which has sustained the expansion of excess cultivation throughout the increase in demand for illicit uses. *Id.* art. 10. This zone remains subject to annual plans for reduction, substitution, and development, starting with the Integral Program of Development and Substitution, which calls for 5,000 hectares a year to be reduced, until the goal of 8,000 hectares a year is reached. *Id.* This zone includes the provinces of Saavedra, Larecaja, and Loayza, the areas of colonization of Yungas in the Department of La Paz, and the provinces of the Chapare, Carrasco, Tiraque, and Arani of the Department of Cochabamba. *Id.* The zone of illicit production comprises those areas where the cultivation of coca is prohibited, including all territory in Bolivia except the zones defined in Articles 9 and 10 of Ley 1008. Plantations there are subject to mandatory eradication without any compensation. *Id.* art. 11.

77. ABA, *supra* note 69, at 278; Ley 1008, arts. 8-14.

between the government and the coca growers in June 1987.⁷⁸ Ley 1008 states that all coca crop substitution will be accomplished gradually. Crop substitution will be implemented in conjunction with socio-economic development programs in the traditional and surplus-in-transition zones.⁷⁹ The law defines as illicit all uses of the coca leaf destined for the chemical production of cocaine.⁸⁰

Ley 1008 establishes a new system outside the normal criminal process for prosecuting traffickers, producers, and users of drugs,⁸¹ as well as a licensing process for legal coca marketing.⁸² Ley 1008 creates a separate system of justice that has sole jurisdiction over narcotics offenses.⁸³ As one of its primary objectives, the legislation seeks to hasten the prosecution of narcotics offenses. The length of investigations by the police and prosecutors, as well as the lengths of trials, closing argument periods, and sentencing proceedings, were all reduced.⁸⁴ Under Ley 1008, accused drug offenders remain in jail during the entire judicial process.⁸⁵ Automatic pre-trial incarceration, coupled with mandatory sentencing provisions,⁸⁶ allows prosecutors and judges almost no discretion in the prosecution of drug offenders. Thus, the enforcement mechanisms of Ley 1008 have been criticized as severe.

78. *Acuerdo Sobre el Plan Integral de Desarrollo y Sustitucion (PIDYS)*, in COCA-CRONOLOGÍA, *supra* note 69, at 29 (agreement signed on June 6, 1987 between the Government and the Bolivian Labor Union (*Central Obrera Boliviana*), the Confederation of Rural Workers Union (*Confederación Sindical Única de Trabajadores Campesinos de Bolivia*), and the Federations of Coca Producers (*Federaciones de Productores de Coca*)).

79. See Ley 1008, art. 22; Mac Gregor, *supra* note 17, at 19.

80. See Ley 1008, art. 7.

81. See ABA, *supra* note 69, at 278; see also Ley 1008, tits. III, IV, V.

82. See ABA, *supra* note 69, at 278; see also Ley 1008, tit. I, ch. II, tit. II, ch. II.

83. The system is made up of the Controlled Substance Courts (*Juzgados de Sustancias Controladas*) and the Controlled Substance Judges (*Jueces de Sustancias Controladas*). See Ley 1008, arts. 83-90; ABA, *supra* note 69, at 281.

84. The instructional stage of trial (*etapa de instrucción*), during which the prosecutor and the defense attorney present additional proof before the court, was also eliminated. This stage was deemed unnecessary because most arrests are *in flagrante delicto* (in the act). See ABA, *supra* note 69, at 281-82. If the procedures of Ley 1008 are strictly followed, a case should last 111 days from arrest to Supreme Court sentencing. A typical case lasts three to four years before a final sentence. See *id.* at 282. For an overview of the criminal proceedings, see *id.* at 282-86.

85. See *id.* at 287.

86. See Ley 1008, art. 48.

Some commentators believe Ley 1008 contains unconstitutional provisions on its face⁸⁷ and contributes to possible human rights violations as applied.⁸⁸ Bolivia's prisons are filled with drug offenders, the majority of whom are very poor.⁸⁹ Human rights activists assert that the underclass is being discriminated against through the application of Ley 1008 because the poor are disproportionately represented in the prisons.⁹⁰ Suggested reforms for Ley 1008 include keeping the *cocaleros* and *pisa-coca*⁹¹ out of prisons. Because farmers who cultivate coca and other low-level drug participants are easily replaced with other growers and are often manipulated by higher drug organizations, their incarceration is unlikely to reduce the illicit production of coca.

Nearly a decade since its enactment, Ley 1008 still inspires fierce debate in Bolivia. Even the government's position on the law has wavered and remains ill-defined. During the first fifteen months of President Gonzalez Sanchez de Lozada's term in office, which began in July 1993, government officials proposed twenty different positions on coca control.⁹² These included continued eradication of "excess" coca leaf, voluntary eradication, alternative crop development, and "opción 0," or total eradication of all coca in the main growing region within six years.⁹³ The Bolivian

87. The law presumes the guilt of the accused, whereas the Bolivian Constitution, the Penal Code, and the Code of Criminal Procedure require the presumption of innocence. See ABA, *supra* note 69, at 288 (citing *Constitución Política del Estado de Bolivia*, art. 16 (1972); *Código de Procedimiento Penal, Decreto Ley No. 104.226*, art. 3 (1972); and *Código Penal, Decreto Ley No. 10426*, art. 70 (1972)). Ley 1008 mandates incarceration of prisoners until the Supreme Court makes a ruling; this includes those acquitted by a lower court. See *id.*

88. See *id.* at 279. Recent reports state that Bolivian police have increased enforcement against illegal coca in reaction to U.S. pressure, which has led to violent confrontations between police and the coca growers. LaGessee, *supra* note 16.

89. See ABA, *supra* note 69, at 287. While the intent of the law was to punish narco-traffickers who exploit the poor and bring crime and violence to Bolivia, the poor ultimately feel the harshness of the law. See *id.* at 288.

90. With the rights of incarcerated, accused drug offenders also curtailed by Ley 1008, and unsanitary, and overcrowded conditions of most prisons, human rights activists find legitimate grounds on two fronts to criticize the law. See *id.* at 289. Recently, however, Bolivia's Minister of Justice, Rene Blattman, told the U.N. Commission on Human Rights that Bolivia had made progress toward human rights reforms and had passed much legislation to reform the judicial system, including modified anti-drug laws. See *Bolivian Justice Minister Tells Human Rights Commission of Reform in Country's Judicial System*, M2 Presswire, Apr. 2, 1997, available in LEXIS, Market Library, IACNWS File.

91. This term refers to the peasants hired to perform manual labor in the coca maceration pits. See ABA, *supra* note 69, at 290 n.36.

92. See *id.* at 279.

93. See *id.*

government even proposed the international legalization of coca leaf cultivation as part of an agreement between the government and the coca producers. The international community, however, rejected Bolivia's proposal.⁹⁴

From the U.S. perspective, Ley 1008 is a clear and necessary law that, if fully implemented, could alleviate some of the cocaine problems the United States faces.⁹⁵ Many aspects of the law have not been implemented fully, however, because the *cocaleros* have placed political pressure on the Bolivian government.⁹⁶ Coca plantations have continued to expand, while the coca leaf trade has remained outside the legal markets and few cocaine traffickers have gone to jail.⁹⁷ Ley 1008 is not enforced because there is no national consensus with respect to coca cultivation. Although Bolivians do not support the criminal aspects of narco-trafficking, *cocaleros* represent Bolivian culture and tradition in resisting U.S. power and influence. Further, the financial rewards of coca cultivation and cocaine trafficking are substantial.

Recently, talks between the government and *cocaleros* have sparked renewed resentment among Bolivians against the anti-drug law. Many Bolivians maintain that Ley 1008, as a concession to international requirements, represents a threat to national sovereignty and to the cultural and historical traditions associated with the coca leaf.⁹⁸ Moreover, many Bolivians believe that all U.S. assistance hinges on Bolivia's cooperation in the U.S. war against drugs. U.S. certification requirements support this belief.⁹⁹ As the United States urged the promulgation of Ley 1008 and provides support¹⁰⁰ conditioned on eradication efforts,

94. A U.N. Development Program spokesman said that the general opinion of the U.N. was "against decriminalization of coca on a world level." *Bolivia Coca Proposal Rejected*, UPI, Sept. 29, 1994, available in LEXIS, News Library, UPI File.

95. See ABA, *supra* note 69, at 291.

96. The coca farmer union, with a membership of 35,000, is the largest union in Bolivia. In September 1994, members participated in a two-week march from the jungle to the capital of La Paz. During their march, they gained much support from the city population, which then pressured the government to sign an Accord with the union. This Accord recognized the rights of the coca workers and the legitimacy of their requests, and stated that the government would consider further decriminalization of coca. See *id.* at 291 n.37.

97. Mac Gregor, *supra* note 17, at 20.

98. Well-organized coca farmers portray the *cocaleros'* struggle as a fight for "Bolivian rights, culture and independence against capitalist exploitation and U.S. imperialism." William R. Long, 'Coca Power' Winning Bolivian Drug War, L.A. TIMES, Sept., 24, 1995, at A1.

99. See *infra* notes 162-68 and accompanying text.

100. The United States provides equipment, facilities, and bonuses to the prosecutors responsible for prosecuting crimes under the law. See ABA, *supra* note 69, at 293.

Bolivians often refer to Ley 1008 as the *Ley de Extranjeros*, or the "Law of Foreigners."¹⁰¹ Not surprisingly, coca production remains steady and most Bolivians do not necessarily support large-scale reduction.

III. INTERNATIONAL INVOLVEMENT IN BOLIVIA'S COCA INDUSTRY

Drug problems are not isolated within the boundaries of particular countries, although some countries gain more notoriety than others. Rather, narcotics consume much international time, effort, and concern and demand legal responses from international actions.

A. *The International Drug Problem*

The United States launched its war on cocaine in the 1980s because of increasing demand for cocaine within its borders.¹⁰² While the use of powder cocaine decreased throughout the 1980s, the use of rock, or crack, cocaine skyrocketed.¹⁰³ Although the United States remains the biggest proponent of the war on drugs, illicit drug trafficking has become a problem of truly international proportions. Millions of people are involved in the production, processing, and distribution of illegal drugs, as well as in related industries such as money laundering.¹⁰⁴ The proceeds of the international drug business are difficult to assess, but estimates range from \$150 to \$500 billion a year.¹⁰⁵ The trade stimulates violent crime throughout many countries. As much as ninety percent of U.S. violent crime is believed to be drug related,¹⁰⁶ while drugs account for as much as eighty-five percent of violent crime in Canada and Western Europe.¹⁰⁷

International drug trafficking substantially impacts both international and national security. Drugs have strained

101. *See id.* at 292-93.

102. SANABRIA, *supra* note 22, at 58-9.

103. *Id.*

104. Klepak, *supra* note 8.

105. *Id.*; Omicinski, *supra* note 5. For an economic analysis of the international drug trade, see Edward J. Nell, *The Dynamics of the Drug Market*, CHALLENGE, Mar. 1994, at 13, available in LEXIS, News Library, ASAPII File (stating that the dynamics of supply and demand in the drug market not only cause coca eradication efforts to fail, but also create increased levels of production).

106. Klepak, *supra* note 8.

107. *Id.*

relations between states¹⁰⁸ and have provided the basis for foreign military interventions, such as the U.S. invasion of Panama in 1989. Drugs have also financed wars, serving as the main source of funds for some armed movements.¹⁰⁹ Drug organizations have encouraged civil unrest within several countries; the link between drugs and local criminal elements is often strong. Illicit drug trafficking has also threatened the political and economic stability of many countries, including Colombia, Peru, Mexico, and Bolivia.¹¹⁰ The international drug trade also threatens the national sovereignty of numerous nations, because nations cannot control the drugs passing through or being produced within their borders. This leads powerful countries, such as the United States, to place great pressure on lesser developed countries involved in the drug trade.

B. U.N. Narcotics Efforts

International recognition of the power and danger of drug trafficking began as early as the 1909 Shanghai Opium Conference, resulting in the International Opium Convention at the Hague in 1912.¹¹¹ The League of Nations established an effective system in the 1920s and 1930s for controlling the international production, trade, and use of dangerous drugs for medical and scientific purposes.¹¹² The U.N. has strengthened

108. Because most producer states are in the Southern Hemisphere and most consumer states are in the Northern Hemisphere, an added strain is placed on North-South relations. The United States intervention in Latin America is a prime example. *Id.*

109. Some of these areas include Lebanon and the Middle East, the Balkans, the southern republics of the former USSR, Burma, Central America, and Sri Lanka. *Id.* The taking of hostages at the Japan Ambassador's residence by Peruvian Tupac Amaru rebels on December 17, 1996, has been suggested as yet another example of drug-financed armed movements. Laurie Goering, *In Saving Hostages, Peru Raid May Have Doomed Movement*, CHI. TRIB., Apr. 25, 1997, at 6.

110. Mexico and Colombia have been deemed "narco-states" by some commentators. Omicinski, *supra* note 5. A "narco-state" is the result of the merger between the criminal elite class and the traditional elite class in the common pursuit of illicit narcotics trafficking. *Id.* The repercussions are not only felt in the Western Hemisphere; Burmese national cohesiveness has also been shaken by connections between drugs and local forces. Klepak, *supra* note 8. Several other Asian countries have also linked social unrest with drugs, because drugs often provide an available source of funds for all ideological groups. *Id.*

111. International Opium Convention, Jan. 23, 1912, 38 Stat. 1912, 8 L.N.T.S. 187.

112. See Jack Donnelly, *The United Nations and the Global Drug Control Regime*, in *DRUG POLICY IN THE AMERICAS*, *supra* note 13, at 282.

this system since 1945¹¹³ and has increased its involvement in the international attack on drug abuse and drug trafficking.¹¹⁴ The 1961 Single Convention shifted international attention from controlling drugs used for medical and scientific purposes to controlling drugs used for illicit purposes.¹¹⁵ The U.N. has recognized the increasingly international scope of the drug trade in the last decade through three instruments: the 1987 International Conference on Drug Abuse and Illicit Traffic (hereinafter 1987 Conference), the 1988 U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (hereinafter 1988 Convention), and the 1990 Seventeenth Special Session of the General Assembly (hereinafter 1990 Special Session), devoted to the control of drug abuse.¹¹⁶

The 1987 Conference established the Comprehensive Multidisciplinary Outline of Future Activities in Drug Abuse Control (hereinafter CMO).¹¹⁷ Although not designed as a formal legal instrument, the CMO provides recommendations for measures to combat drug abuse and curb drug trafficking.¹¹⁸ The 1987 Conference expands the scope of the 1961 Convention by focusing attention on illicit demand and treatment for drug abuse. It also calls for increased coordination among different actors at both the national and international levels.¹¹⁹ To control drug supply, the CMO suggested strengthening the international restriction of narcotic drugs and psychotropic substances.¹²⁰ It

113. Although the U.N. adopted the general approach of the League of Nations, it found it necessary to consolidate the international effort by 1960, when six different drug control treaties and two amending protocols were in force. *Id.* at 286. The 1961 Single Convention codified and strengthened earlier treaties. It was amended by the 1972 Protocol, and is still one of the most important documents of the international drug control regime. Its central principle is "to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use, and possession of drugs." *Id.*

114. *Id.*

115. See *supra* notes 51-56 and accompanying text. The 1961 Single Convention, *supra* note 51, was later amended by the Protocol Amending the Single Convention on Narcotic Drugs, Mar. 25, 1972, T.I.A.S. No. 8118, 976 U.N.T.S. 3 (strengthening the 1961 Single Convention to prevent the illicit production and trafficking of narcotics).

116. See Donnelly, *supra* note 112, at 288.

117. See *id.* (citing the International Conference on Drug Abuse and Illicit Traffic, UN Doc. A/CONF.133/12, U.N. Sales No. E.87.I.18 (1987)).

118. The CMO addresses prevention and reduction of illicit demand, controlling supply, illicit trafficking, and treatment and rehabilitation. The emphases on demand and treatment reach beyond the 1961 Convention, which was largely supply-oriented. See *id.*

119. *Id.* at 288-89 (explaining the Conference's emphasis on the participation of various actors, such as national governments, institutions of higher learning, research, and other academic bodies).

120. *Id.* at 289.

also suggested the identification and elimination of illicit narcotic plant cultivation, as well as the redevelopment of areas formerly under illicit drug crop cultivation.¹²¹ In its redevelopment proposals, the CMO recognized many of the financial incentives of poor farmers to cultivate illicit drugs.¹²² While these proposals were general, the plan recognized that the approach to the illicit drug trade must be multifaceted.¹²³

The 1988 Convention was the first major effort by the U.N. since 1973 to establish a set of norms to address the international drug trafficking issue.¹²⁴ Because domestic laws and international enforcement mechanisms had failed to control the illicit drug trade,¹²⁵ the 1988 Convention endeavored to establish an expansive set of laws and guidelines to be adopted by all party states in fighting the illicit drug trade. The 1988 Convention essentially sought to foster a new international regime to combat illicit drug trafficking.¹²⁶

The United States played an active role during the 1988 Convention.¹²⁷ Hence, the 1988 Convention implements much of what the United States had already developed, both domestically and bilaterally, in the area of illicit drug control.¹²⁸ For other countries, however, the Convention provides new legal ideas and mechanisms to address drug trafficking.¹²⁹ The 1988 Convention requires party states to implement specific law enforcement

121. *Id.*

122. *Id.* at 290. Previous supply-side efforts focused largely on eradication without effectively addressing broader economic issues.

123. *Id.*

124. See David P. Stewart, *Internationalizing the War on Drugs: The UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, 18 DENV. J. INT'L L. & POL'Y 387, 389-90 (1990); see also Donnelly, *supra* note 112, at 283 (stating that, although the global drug control regime is largely in the hands of national, not international, actors, the norms developed by the U.N. to address drug control are coherent, well-developed, and commended by many states).

125. See Stewart, *supra* note 124, at 387. Work on the Convention began in 1984. See *id.*

126. See *id.* The 1988 Convention gave force to the illicit trafficking recommendations of the CMO. Donnelly, *supra* note 112, at 291.

127. See Stewart, *supra* note 124, at 388. The Convention was adopted by 106 states by consensus at the U.N. Conference in Vienna and became binding on November 11, 1990. See Sharon A. Gardner, Comment, *A Global Initiative to Deter Drug Trafficking: Will Internationalizing the Drug War Work?*, 7 TEMP. INT'L & COMP. L.J. 287, 294 (1993).

128. Donnelly, *supra* note 112, at 291 (noting that while this treaty was not especially innovative, if it had attempted sweeping changes, it probably would not have been ratified by enough states to give the treaty any significance). "The real impact of any such treaty, if it is successful, will be to raise the average level and intensity of activity among states to something much closer to the highest level prevailing at the time." *Id.*

129. See Stewart, *supra* note 124, at 388.

measures to improve their ability to identify, arrest, prosecute, and convict those who traffic in illicit drugs.¹³⁰ Included within the Convention's provisions are new, stricter controls on the international trade of previously unmonitored chemicals, equipment, and other materials used in the covert manufacture of drugs.¹³¹ The Convention further requires party states to cooperate with one another to suppress illicit drug trafficking by sea or through the mails.¹³²

The U.N. Commission on Narcotic Drugs and the U.N. International Narcotics Control Board monitor the operation of the Convention and the responsibilities of party states.¹³³ Article 3 of the Convention addresses offenses and sanctions under the Convention, focusing on the drug trafficking and money laundering activities that have the greatest international impact.¹³⁴ The offenses and sanctions reflect many existing provisions of U.S. law, and increase criminal regulation of the international illicit drug trade. The Convention requires the confiscation of property, proceeds, or instrumentalities used in or derived from covered offenses.¹³⁵ The Convention also aims to make it easier for prosecuting states to obtain the extradition of narcotics traffickers from overseas.¹³⁶

Article 6 amends existing extradition treaties between party states to include offenses covered by Article 3(1) as extraditable offenses; moreover, these offenses are extraditable between states that do not make extradition conditional on an extradition treaty.¹³⁷ The Convention also creates a general treaty obligation for countries to enter mutual legal assistance treaties (hereinafter

130. See *id.* at 391. Bolivia's Ley 1008 specifically implements these suggestions, as the entire process is streamlined. See *supra* notes 69-86 and accompanying text.

131. See Stewart, *supra* note 124, at 391.

132. See *id.*

133. See UNITED NATIONS CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES, U.N. ESCOR, 6th plen. mtg., at 3, 26, 27, U.N. Doc. E/CONF. 82/15 (1988), reprinted in 28 I.L.M. 497 (1989) [hereinafter 1988 Convention].

134. See Stewart, *supra* note 124, at 392-94.

135. 1988 Convention, *supra* note 133, art. 5.

136. *Id.*

137. *Id.* art. 6. In 1996, Bolivia and the United States signed an extradition treaty. *Bolivia Signs Extradition Treaty*, *supra* note 9. The United States has been urging countries throughout Latin America and the Caribbean to sign extradition treaties in an attempt to punish drug traffickers. The United States has signed new extradition treaties with Barbados, Trinidad and Tobago, Dominica, Antigua and Barbuda, Granada, and Bolivia, but has met resistance from Mexico, Colombia, and the Dominican Republic. Shelley Erling, *Dominican Criminals Escaping U.S. Justice*, ATLANTA J. & CONST., Apr. 13, 1997, at B7.

MLATs).¹³⁸ MLATs allow courts of one state to obtain evidence from abroad in a form admissible in the courts of the requesting state.¹³⁹ In addition to these treaties, party states must provide less formal types of law enforcement assistance, cooperation, and training.¹⁴⁰

Under Article 12, parties to the Convention must take appropriate measures to prevent the manufacture and distribution of certain chemicals used for the illicit manufacturing of narcotic drugs or psychotropic substances.¹⁴¹ Parties must maintain monitoring systems for the international trade of such chemicals and provide for the proper labeling and documentation of chemicals imported or exported for any purpose. Parties must also seize chemicals if sufficient evidence exists that they are chemicals used in the illicit manufacture of a narcotic drug or substance.¹⁴² Under Article 13, parties must strive to prevent trade in materials or equipment used for the illicit production or manufacture of narcotic drugs and psychotropic substances.¹⁴³

Although the Convention is largely aimed at suppressing illicit drug *trafficking*, it also addresses the reduction of production and demand. Under Article 14, each party state must take appropriate measures to prevent the illicit cultivation of plants containing psychotropic substances. These plants include the opium poppy, the coca bush, and cannabis plants. Pursuant to the Convention, parties must take measures at least as stringent as those stipulated by the 1961 Single Convention or the 1971 Psychotropic Substances Convention.¹⁴⁴ Further, party states must take appropriate measures to eliminate or reduce illicit demand for narcotic drugs and psychotropic substances based on recommendations from U.N. bodies such as the World Health Organization.¹⁴⁵ The Convention encourages bilateral and multilateral agreements concerning interdiction and other law enforcement activities.¹⁴⁶ Articles 20-23 and 32 outline the supervising mechanisms of the Convention.¹⁴⁷

138. 1988 Convention, *supra* note 133, art. 7.

139. *See* Stewart, *supra* note 124, at 398-99.

140. *See* 1988 Convention, *supra* note 133, art. 9.

141. *Id.* art. 12. The targeted chemicals are listed in Tables I and II of the Convention. *Id.* tbls. I & II.

142. 1988 Convention, *supra* note 133, art. 12.

143. *Id.* art. 13.

144. Convention on Psychotropic Substances, Feb. 21, 1971, 32 U.S.T. 543, 1019 U.N.T.S. 175.

145. *See* Stewart, *supra* note 124, at 403.

146. 1988 Convention, *supra* note 133, art. 10(3).

147. *See* Gardner, *supra* note 127, at 297.

Although the 1988 Convention binds party states,¹⁴⁸ the international scope of the drug problem appears to have worsened since the Convention was ratified. The effect of the 1988 Convention on the Andean coca-producing states has been questionable. Although Bolivia, Peru, and Colombia have signed the Convention, only Bolivia and Peru have ratified it.¹⁴⁹ Bolivia ratified the Convention in 1989, after heightened criticism of its drug policies by the United States.¹⁵⁰ The Convention's Articles 5, 12, 13, and 14, addressing drug production, focus on efforts that the Andean countries can make to help achieve the goals of the Convention.¹⁵¹ The Bush Administration signed major chemical control agreements with Bolivia, Peru, and Colombia to facilitate law enforcement checks on the legitimacy of chemical shipments.¹⁵² As a party state to the Convention, Bolivia is expected to uphold its treaty obligations.

The U.N. General Assembly created a new U.N. International Drug Control Programme in 1990 by integrating the three existing U.N. anti-drug units: the U.N. Division of Narcotic Drugs, the International Narcotics Control Board, and the U.N. Fund for Drug Abuse Control.¹⁵³ By merging the three organizations, the U.N. sought to improve coordination and eliminate duplicative efforts.¹⁵⁴ Two recommendations by the U.N. General Assembly specifically affect Andean countries. First, the U.N. recommends that both source and transit states investigate chemical shipments to prevent their use in illicit drug trafficking. Second, governments should pass laws to control and monitor precursor chemicals used in the production of cocaine and other covertly produced drugs.¹⁵⁵ The 1990 Special Session produced the

148. As of January 1, 1996, more than 100 states had either ratified or acceded to the 1988 Convention. See U.S. DEPT. OF STATE, TREATIES IN FORCE 401 (1996) (listing more than 100 states that had ratified the 1988 Convention).

149. See Gardner, *supra* note 127, at 301-04.

150. In 1988, President Bush encouraged Bolivia to do more to stop the spread of coca cultivation, suggesting enforcement of Bolivia's anti-narcotics law and forceful eradication programs. See *id.* at 303. The United States also called for intensified Bolivian interdiction activities to disrupt cocaine processing and to encourage farmers to seek alternate livelihoods because of shrinking coca markets. See *id.*

151. See *supra* notes 133-44 and accompanying text.

152. See Gardner, *supra* note 127, at 295 n.75.

153. See *id.* at 298.

154. See *id.* The U.N. Commission on Narcotic Drugs, created in 1946 by the U.N. Economic and Social Council, still functions as the policy-making body in the U.N. with respect to drug issues. See *id.* This Commission and the integrated U.N. International Drug Control Programme report to the U.N. Secretary-General under Article 20 of the 1988 Convention. See *id.* at 299.

155. See *id.* at 298.

Political Declaration and Global Programme of Action.¹⁵⁶ This declaration reaffirmed the need for "strategies that are comprehensive and multidisciplinary," emphasizing the relationships among demand, production, supply, trafficking, and distribution.¹⁵⁷ The declaration states that international support will be provided for "viable alternative income schemes" in developing countries and for control efforts in developing transit countries.¹⁵⁸

The U.N. has established a normative framework for an international approach to the drug problem. The report of the Commission on Narcotic Drugs to the 1990 Special Session summarized the consensus on several general principles, including the belief that existing treaties provide a firm basis for current action.¹⁵⁹ The challenge since the 1990 Special Session, however, has been implementing and enforcing its political consensus.¹⁶⁰ The norms created by the 1988 Convention and the political declaration of the 1990 Special Session form the background for international involvement in the illicit drug trade. With respect to enforcement of these strategies, however, national actors still play the largest roles in the international drug scene.¹⁶¹ Thus, although the U.N. has provided international norms, unilateral and bilateral action initiated by the United States still accounts for the majority of drug control efforts in the Andean region.

156. G.A. Res. 5-17/2, U.N. GAOR, 17th Special Sess., 8th plen. mtg., Annex, Agenda Items 14 and 15, U.N. Doc. A/RES/S-17/2 (1990).

157. Donnelly, *supra* note 112, at 291 (citing para. 6 of the Political Declaration).

158. *Id.* at 292 (citing para. 13 of the Political Declaration). Transit countries often do not produce any illicit drugs, but become involved during the transport of the substances. *Id.* Developing transit countries include Mexico, the Bahamas, and Panama. *Id.*

159. The report stated the other principles: The CMO provides an adequate basis for developing new national policies; states have primary responsibility for drug control, but international cooperation is necessary to support states; success ultimately depends on reducing demand; a comprehensive, multisectoral approach is necessary; the U.N. role needs to be expanded; and additional financial resources are required. *See id.* at 293.

160. The U.N. Administrative Committee on Coordination said: "The major task before the international community now is to translate this unanimous political commitment of Governments into effective action." *Id.* (quoting E/1990/18, paragraph 5).

161. *Id.* at 302 (suggesting that the global drug control regime will probably remain restricted mainly to promotion and assistance activities. Assistance may include the areas of forensic science, law enforcement, and information and resources in prevention and treatment).

IV. HEMISPHERIC STRATEGY

Although the international community has attempted to control drug production and trafficking, at most it sets international goals and boundaries. Regional and national actors propose more short-term concrete agenda for narcotics control. The United States and Latin America play major roles in the drug-control arena.

A. U.S. Efforts to Stop Drug Production and Trafficking

Although the illicit drug trade plagues much of the international community, the United States remains the most vocal and forceful nation in its demand that the illicit trafficking of drugs be stopped. The United States has enacted various laws in its attempts to curb the international production and flow of illicit drugs. In Bolivia, U.S. involvement has been constant and indicative of its policy toward other Andean nations.¹⁶²

Although prior U.S. administrations made modest efforts, the international scope of the U.S. war on cocaine was heightened under President Reagan. The Reagan Administration initiated more law enforcement efforts to reduce supply and demand, focusing relatively little attention on treatment and prevention.¹⁶³ Congress passed amendments to the Foreign Assistance Act in 1986,¹⁶⁴ allowing itself to suspend economic aid to countries uncooperative in the U.S. drug effort. The 1986 Anti-Drug Abuse Act declared drug control a top priority in U.S. foreign policy and created the certification system, which is still the key enforcement tool in the Andean region. Under the certification system, the United States uses foreign economic aid to pressure foreign

162. Peru and Colombia have resisted more of the U.S. efforts in years past. The presidency of Alberto Fujimori in Peru signified a more cooperative relationship, and one less affected by terrorist insurgencies such as those by the Shining Path ("*Sendero Luminoso*") guerrillas. *The Wages of Prohibition*, *ECONOMIST*, Dec. 24, 1994, at 21. In Colombia, the Colombian government made efforts to dismantle the Medellin cartel, which U.S. officials claimed was responsible for 80% of the cocaine reaching the United States during the 1980s. *Id.* In 1993, Colombian security forces killed Medellin leader Pablo Escobar, but the cocaine trafficking business was not greatly affected. *Id.*

163. Sandi R. Murphy, Note, *Drug Diplomacy and the Supply-Side Strategy: A Survey of United States Practice*, 43 *VAND. L. REV.* 1259, 1262 (1990). The drug law enforcement budget rose from \$468.1 million in 1979 to \$695 million in 1982. *Id.* at n.17. The budget for drug treatment declined from \$404.8 million to \$206.4 million in the same period. *Id.*

164. 22 U.S.C. § 2291 (1988) (as amended by the Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, § 2005, 100 Stat. 3207-61 to -62 (1986)) (authorizing withholding aid from drug-producing countries).

governments to establish domestic drug control measures.¹⁶⁵ The President must "certify" that drug-producing nations are cooperating with the United States in fighting drug production and trafficking or are taking sufficient steps on their own.¹⁶⁶ If a country is "decertified," the United States will cease aid and oppose World Bank and other multilateral development loans. Hence, the decertified country will be branded a drug-trafficking nation.¹⁶⁷ Although certification is employed as a big stick in U.S. drug diplomacy, some commentators argue it has had no impact on drug production or trafficking thus far.¹⁶⁸

Increased international efforts to control illicit drug trafficking largely failed; drug supplies to the United States increased from 1986 to 1988.¹⁶⁹ Congress then passed the Anti-Drug Abuse Act of 1988, which set aside fifty percent of the 1989 drug budget for domestic efforts to control U.S. demand, to be increased to sixty percent in subsequent years.¹⁷⁰ Although the 1988 Act did not change the unilateral strategies of the 1986 Act, such as the U.S. certification system, it did call for increased multilateral and regional involvement in controlling the international drug trade.¹⁷¹

In 1989, President Bush announced an anti-drug plan heavily focused on international action.¹⁷² The Andean Strategy

165. These measures included crop eradication, law enforcement militarization, extradition of foreign nationals, and mutual legal assistance for prosecution. Murphy, *supra* note 163, at 1263. Under this plan, 75% of the total drug budget was set aside for programs to control the supply of drugs. *Id.*

166. Falco, *Passing Grades*, *supra* note 2, at 15.

167. *Id.* In 1995, decertification would have eliminated \$81 million in U.S. assistance for Bolivia and jeopardized \$350 million in Inter-American Development Bank loans. *Id.* at 18.

168. *Id.* at 19. While countries do not want to be decertified, they have been criticized for attempting to meet U.S. standards of cooperation without truly attacking the problem of drug trafficking. *Id.* The recent development in Mexico is a prime example: one week before President Clinton was to decide on whether Mexico would be certified for 1997, Mexico's top anti-drug liaison to the United States, General Jesus Gutierrez Robello, was accused of taking bribes from a drug lord. *Starr's Credibility Takes Another Flip*, TENNESSEAN, Feb. 25, 1997, at 6A, available in LEXIS, News Library, TENNES File.

169. Falco, *Passing Grades*, *supra* note 2, at 16.

170. Murphy, *supra* note 163, at 1263; see Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, 102 Stat. 4181 (1988). While President Bush increased the international efforts of the U.S. anti-drug struggle in subsequent years, President Clinton has increased focus on domestic treatment programs.

171. Murphy, *supra* note 163, at 1264. The 1988 Convention adopted many U.S. enforcement strategies. *Id.* at 1264. Since the 1988 law, several hemispheric summits have addressed the drug issue. See *infra* notes 227-50 and accompanying text.

172. Under this plan, about 70% of the U.S. drug control budget was devoted to curbing the international flow of drugs. HARGREAVES, *supra* note 26, at

was to be a five-year plan under which the United States would pledge \$2.5 billion to Bolivia, Peru, and Colombia beginning in 1989.¹⁷³ Although the international drug control budget no longer outweighs the domestic budget, Bush's Andean Strategy still forms the backdrop for U.S. law and policy in the region.¹⁷⁴ The strategy was a mixture of "carrot and stick" measures, divided into three main areas: law enforcement, crop eradication, and economic assistance. Law enforcement entailed interrupting drug traffickers' activities and seizing their assets before cocaine reached the United States. Measures included destroying processing laboratories, seizing airplanes, tracing and imprisoning leaders of major trafficking organizations, and blocking shipment of chemicals needed to process cocaine.¹⁷⁵

Eradication plans called for the destruction of coca plants in Bolivia and Peru. By eradicating coca, U.S. policy-makers hoped to eliminate cocaine. Coca fields are easily visible from the air, and coca farmers are not well-armed traffickers.¹⁷⁶ Although the cheapest way to eradicate coca is to uproot the plants by hand, this proved too slow and dangerous.¹⁷⁷ In 1987, scientists developed a herbicide that could be sprayed from the air and appeared to be environmentally safe.¹⁷⁸ A 1987 State Department report in Peru encouraged the use of the herbicide, and U.S. diplomats in Peru persuaded the government to start testing it, but environmentalists worried it was unsafe.¹⁷⁹ U.S. support for the use of herbicides in eradicating coca fields eventually diminished,¹⁸⁰ and Bolivia's Ley 1008 outlawed their use.¹⁸¹

18. The international component of Bush's plan was called his Andean Strategy. *Id.*

173. *Id.*

174. President Clinton shifted much of the drug control budget to domestic treatment programs in 1993, but has reinvigorated the U.S. international drug policy with the appointment of General Barry McCaffrey. James Kitfield, *Four-Star Czar*, 28 NAT'L J. 819-21 (1996).

175. See HARGREAVES, *supra* note 26, at 18.

176. *Id.* at 19.

177. In Peru, 32 eradication workers were killed between 1982 and 1988. *Id.* Eradication efforts were suspended for more than a year. *Id.*

178. *Id.* The herbicide's name was Tebuthiuron, known as "Spike."

179. *Id.* Environmentalists said that Spike was an "indiscriminate defoliant" that might cause serious harm to the ecosystem of the Andean jungle. *Id.* The U.S. Environmental Protection Agency also warned that, if Spike entered the ground water, it could contaminate water supplies. *Id.*

180. *Id.* at 20. In 1988, Spike's only manufacturer, Eli Lilly & Company, refused to sell the herbicide to the State Department for coca eradication because it was worried about potential environmental litigation, as well as retaliation against its employees by drug traffickers. *Id.*

181. See Ley 1008, art. 7. Peruvian President Fujimori allowed U.S. scientists to continue tests, but did not approve the use of the herbicide. HARGREAVES, *supra* note 26, at 20.

The third area of the Andean Strategy was economic aid. Under the Bush plan, crop substitution and other economic revitalization programs would be implemented after law enforcement made countries safe and free of coca fields.¹⁸² Although U.S. aid is significant to the Andean region, so are revenues from cocaine. While the United States provided \$98.5 million in economic aid to Bolivia in 1991, cocaine adds between \$300 and \$600 million a year to the Bolivian economy.¹⁸³

The Andean Strategy implemented under the Bush Administration remains largely intact, although President Clinton has shifted some U.S. funds from interdiction to domestic treatment efforts.¹⁸⁴ The Director of the Office of National Drug Control Policy prepared the National Drug Control Strategy and through the President submitted it to Congress in 1996. It states strategic goals to reduce illicit drug use in the United States. Three of the goals, as well as the majority of funding and effort, directly relate to actions against the production, traffic, and abuse of illicit drugs within the United States.¹⁸⁵ Assistant Secretary of State for International Narcotics Matters Robert S. Gelbard said that the basic U.S. policy goal in international narcotics control is "to preserve our national security."¹⁸⁶ He also stated that the roots of the U.S. drug problem "lie abroad, as much as at home."¹⁸⁷ Thus, the United States still views illicit drug trafficking as largely an imported problem and still believes extra-territorial solutions are necessary. This U.S. notion forms the basis for much of its legislation and policy in Bolivia, as well as in the rest of Latin America. It also fuels the tension between the United States as a cocaine consumer and Bolivia as a coca and cocaine producer.

182. *Id.* at 21.

183. *Id.*

184. Falco, *U.S. Drug Policy*, *supra* note 3, at 122-23; *see infra* notes 185-87 and accompanying text.

185. Prepared Statement of Robert S. Gelbard, Assistant Secretary of State, Before the House Transportation and Infrastructure Committee, Coast Guard and Maritime Transportation Subcommittee, and Senate Caucus on International Narcotics Control, Fed. News Service, Sept. 12, 1996, *available in* LEXIS, News Library, FEDNEW File. Gelbard also described the increasingly global nature of drug trafficking, as cocaine is moving through many different routes: "Mexico has emerged as the single largest transit avenue and we are seeing new routes by way of Brazil to Europe, and by sea and air to East Asia. Cocaine is emerging in Eastern European countries once principally familiar with heroin." *Id.*

186. *Id.*

187. *Id.*

B. Joint Bolivian-United States Cooperation

In 1987, Bolivia and the United States signed the Narcotic Drugs Agreement and pledged cooperation against narcotic trafficking.¹⁸⁸ The governments agreed to share joint and reciprocal responsibility for the campaign against narcotics production, trafficking, and consumption.¹⁸⁹ The parties agreed to a "Three-Year Plan to Combat Narcotics Trafficking" in which both governments would shoulder coordinated efforts to eliminate the cocaine problem and effect a strategy for the interdiction and reduction of coca cultivation.¹⁹⁰ The treaty defined cocaine trafficking as a crime consisting of the "illegal processing of coca leaves by transformation of the raw material into a paste, base, or hydrochloride and the international marketing and consumption of those products."¹⁹¹ The governments asserted that the most effective strategy for dealing with the narcotics problem would be to heighten public awareness, interdict trafficking, eradicate surplus crops, and assist rural agricultural development.¹⁹²

Under the treaty, the United States agreed to loan Bolivia helicopters, support Bolivian forces responsible for interdicting narcotics and eradicating coca crops, and provide other operational support.¹⁹³ Bolivia agreed to make every effort to enact a narcotics law prohibiting coca cultivation, except for the amount necessary to meet legal demand.¹⁹⁴ Bolivia also agreed to implement both voluntary and compulsory coca eradication programs, with financial and technical support from the United States.¹⁹⁵

Annex I of the treaty outlines the interdiction program, with its stated goal to eliminate production and narcotics trafficking in Bolivia.¹⁹⁶ The components of the interdiction program include targeting and destroying narcotics-buying organizations,

188. Agreement on Narcotic Drugs, Feb. 24, 1987, U.S.-Bolivia, T.I.A.S. No. 12053 [hereinafter Narcotic Drugs Agreement].

189. *Id.* at 9.

190. *Id.* The Bolivian government agreed to apply the Three-Year Plan throughout its territory. The Plan included programs for interdiction and rural development, including the eradication of surplus coca crops. *Id.*

191. *Id.* at 8.

192. *Id.*

193. *Id.* at 9.

194. *Id.*

195. *Id.* Bolivia agreed to eradicate a minimum of 1800 hectares of coca within one year of the commencement of the program, with eradication for following years to be set forth in operational letters before each 12-month period. *Id.* at 10.

196. *Id.*, Annex I, at 12. A precondition to the goal of eliminating narcotics production and trafficking is the reduction of the price of coca leaf destined for the narcotics trade to less than its cost of production. *Id.*

controlling the traffic of precursor chemicals, controlling and destroying clandestine airstrips, improving Bolivian law enforcement efforts, and seizing property used in the production, marketing, and storage of narcotics.¹⁹⁷ These target areas are the most realistic in terms of gaining Bolivian national support, because they lie at the heart of criminal narcotics processing activity and reach beyond merely producing coca leaves.

Annex II sets the framework for the Three-Year Anti-Narcotics Plan. The Three-Year Plan incorporates four sub-programs: agricultural transition, economic reactivation, regional development, and narcotics awareness and rehabilitation.¹⁹⁸ The agricultural transition sub-program attempts to provide economic assistance to farmers who voluntarily eradicate all the illegal coca they produce and to facilitate the transition of coca farmers to legal income-generating activities.¹⁹⁹ The economic reactivation sub-program seeks to provide farmers in large coca-producing regions with credit resources to expand their legal agricultural productivity and enable them to begin economic reactivation.²⁰⁰ The sub-program for regional development seeks to develop productive and social infrastructure in the regions affected by the Three-Year Plan to improve the quality of life for people in these regions.²⁰¹ The narcotics awareness and rehabilitation sub-program attempts to provide assistance and resources for projects promoting narcotics awareness and rehabilitation through both public and private efforts.²⁰²

This Three-Year Plan reflects both the long-term solution to Bolivian involvement in the production of coca for cocaine and the reason it will fail. Although the solution to Bolivia's involvement

197. *Id.*, Annex I, at 13-14.

198. *Id.*, Annex II, at 23-24.

199. This sub-program seeks to help in the voluntary eradication of all coca in excess of the legal amount for consumption. *Id.*, Annex II, at 23.

200. *Id.*

201. This program sought to continue and reinforce efforts already started by the Bolivian government through projects already receiving the cooperation of USAID/Bolivia, UNFDAC, and other agencies of the U.N. *Id.*, Annex II, at 24. Emphasis was given to basic social services and infrastructure, such as health, education, rural road improvement, irrigation infrastructure, as well as to improving research, extension, and commercialization of agricultural production. *Id.*

202. Interestingly, although most reports state that Bolivia did not have a drug abuse problem in the 1980s, the program included efforts to inform the public about the dangers to Bolivian society resulting from the production and consumption of narcotics. The program also sought to inform the public about the threat narcotics production and consumption posed to democracy and to social and economic development. Addressing the rehabilitation component of the sub-program, resources would be provided for the development and improvement of drug addiction treatment centers. This sub-program was to serve as a basic support for the other three sub-programs. *Id.*, Annex II, at 24.

in illicit drug production and trafficking will come only with economic revitalization, a bilateral treaty with the United States will not provide the mammoth growth needed for such a transformation. Bolivia's poverty lies deep within its agricultural one-crop export economy. It is perpetuated by external debt and internal mismanagement. These deep-seeded economic and social problems cannot be solved as a corollary to the U.S. war on cocaine. They call for separate and far-reaching measures that must address the sole issue of economic revitalization, not illicit drug control.

Under the 1987 treaty, Bolivia agreed to provide at least twenty percent of the total cost of the four sub-programs, while the United States agreed to provide "most of" or "the bulk of" the remaining necessary resources to implement the Three-Year Plan successfully.²⁰³ Bolivia also agreed to seek third-party financial contributions to meet the requirements of the Plan, and the United States agreed to provide full diplomatic support to help Bolivia secure such assistance.²⁰⁴ Again, U.S. assistance is conditioned on Bolivia's fulfillment of its treaty obligations, namely coca eradication and reduction of other illicit drug activities.

The Narcotic Drugs Agreement was amended and supplemented by a second agreement in 1990.²⁰⁵ The Supplemental Agreement remains focused on supply reduction and trafficking interdiction, although more attention was given to the illicit products derived from coca than to coca eradication itself. This agreement incorporates the previous 1987 treaty between the two parties, Ley 1008,²⁰⁶ and the 1990 Declaration of Cartagena.²⁰⁷ The 1990 treaty outlines additional cooperation between Bolivia and the United States. It also addresses demand reduction, economic cooperation for alternative development, and the interdiction and suppression of drug trafficking.²⁰⁸ The

203. *Id.*, Annex II, at 24-25.

204. *Id.*, Annex II, at 26. Bolivia also agreed to make every effort to use the resources that it has received or may receive from other donors, such as the IDB, IBRD, and the U.N., to meet the requirements of the Three-Year Plan. *Id.*, Annex II.

205. Agreement Concerning Cooperation to Combat Narcotics Trafficking, May 9, 1990, U.S.-Bolivia, Hein's No. KAV 2505, Temp. State Dept. No. 90-161 (amending & supplementing the Narcotic Drugs Agreement, *supra* note 188) [hereinafter Supplemental Agreement].

206. See *supra* notes 69-101 and accompanying text.

207. See *infra* notes 238-41 and accompanying text.

208. The governments agreed that the most effective strategy to combat the drug trafficking problem requires basic concepts, defined at the Cartagena Summit: (1) to increase prevention for the general public and strengthen the political will and institutional capability to fight drug trafficking; (2) to promote alternative development to assist in the permanent reduction of illegal coca

primary goals of the amended program focus on promoting alternative development; eliminating illicit products derived from coca, such as coca paste and cocaine hydrochloride; reducing illegal coca cultivation; and eliminating installations used to make cocaine.²⁰⁹

The revised Annex I explains the interdiction program, entailing increased efforts by the Bolivian Special Force, the primary interdiction agency within this anti-narcotics program. Bolivia agreed to continue supplying the necessary legal authority, political support, personnel, and material resources within its means to fight the illegal production and trafficking of narcotics within Bolivia.²¹⁰ The United States declared its firm intention to continue supplying financial and technical support to the Bolivian government during the implementation of its program to combat narcotics trafficking.²¹¹

Further recognizing the tremendous economic incentives underlying the production of illicit coca, the governments agreed to develop programs to offer economic alternatives to coca farmers under the revised Annex II.²¹² Bolivia and the United States formulated a Social Compensation Fund to alleviate the short-term economic and social impacts that eradicating coca crops will have on coca farmers. Annex II also provides for a Balance of Payments Program.²¹³ This Program recognizes the need for foreign exchange, particularly U.S. dollars, to provide balance of payments assistance in support of the Bolivian government's efforts of economic stabilization, reactivation, and alternative development.²¹⁴ The long-range goal of alternative development

cultivation and replace income, employment and foreign exchange, which are generated by the coca economy; and (3) to increase the effectiveness of the Bolivian organization charged with the fight against drugs, and to equip units of the Bolivian Armed Forces to participate in anti-narcotics actions. Supplemental Agreement, *supra* note 205, at 2-3.

209. *Id.* at 3-4.

210. *Id.*, Annex I, at 4. Bolivia agreed to make a concerted effort to reduce the amount of excess coca by at least 5,000 hectares during 1990 in accordance with Article 10, Ley 1008; to conduct forced eradication of illicit excess coca as provided in Ley 1008; to interdict, seize, and destroy significant quantities of cocaine HCL, base, and paste as well as processing facilities in accordance with Bolivian law; to investigate, arrest, and prosecute major cocaine traffickers; and to sign in 1990 an effective bilateral extradition treaty with the U.S. government. *Id.*, Annex I, at 6-7.

211. *Id.*, Annex I, at 4.

212. *Id.*, Annex II, at 1.

213. *Id.*, Annex II, at 3.

214. *Id.* In fiscal year 1989, \$17,625,000 was provided by the United States for balance of payments support. *Id.* For fiscal year 1990, \$18,000,000 was proposed under the agreement. *Id.* The United States also agreed to seek to renew its assistance to the balance of payments program from 1991 to 1994. *Id.*

in Bolivia was separated into two categories under Annex II: current projects in the coca growing areas and new projects to be implemented in potential population exporting zones.²¹⁵ The current projects include agricultural transition,²¹⁶ economic reactivation,²¹⁷ regional development,²¹⁸ and narcotics awareness and prevention.²¹⁹ Although the revised treaty increases attention to long-term development, financial aid for this still hinges on continued coca and cocaine reduction rather than Bolivia's inherent need for economic progress.

The Supplemental Agreement not only revised Annexes I and II of the 1987 treaty, but also added Annex III, expanding Bolivian Armed Forces participation in the Counter Narcotics Program.²²⁰ Under Annex III, the United States agreed to transfer defense articles and services to enhance the capabilities of Bolivia's Armed Forces to participate in counter-narcotics activities.²²¹ The participation of Bolivian Armed Forces conformed with the 1962 Agreement with the United States,²²² Ley 1008,²²³ and the

215. *Id.*, Annex II, at 4.

216. These programs follow those laid out in the Narcotic Drugs Agreement. See *supra* notes 188-204 and accompanying text. The agricultural transition sub-program was established to provide economic assistance to farmers in transition zones, who voluntarily make substantial reductions in the portion of their land devoted to coca cultivation. This sub-program provides assistance to aid the transition from coca production to alternative income-generating activities. Supplemental Agreement, *supra* note 205, at Annex II, 405.

217. The economic reactivation sub-program provides the population in affected regions with credit resources and technical assistance to expand their productive capacity and allow them to begin economic reactivation. *Id.*, Annex II, at 5.

218. The regional development sub-program seeks to develop productive and social infrastructure in affected regions to improve the quality of life and expand productive capacity there. *Id.*, Annex II, at 6. This sub-program reinforces efforts already started by the Bolivian Government through projects that cooperate with USAID/Bolivia, UNFDAC, and other U.N. agencies. *Id.*, Annex II, at 6-7.

219. *Id.*, Annex II, at 7.

220. *Id.*, Annex III, at 1.

221. On April 26, 1962, Bolivia and the United States agreed that defense articles and services could be furnished to Bolivia for the purpose of contributing to its internal security capabilities. Under the 1990 Supplemental Agreement, the governments agreed that the production and trafficking of illegal narcotics, by their nature and their violation of both nations' laws, constituted a danger to internal security. Bolivia agreed, however, that it will not permit the use of such defense articles and services for any purpose other than narcotics control. *Id.*, Annex II, at 5. Speculation exists, however, that Bolivia is merely using its anti-drug campaign as a front to obtain military equipment from the United States, which Bolivia can then use to build up its own Armed Forces.

222. *Id.*, Annex II, at 1.

223. *Id.*

Cartagena Agreement.²²⁴ The United States agreed to provide as much as \$33,228,000 in Military Assistance Program funds, subject to the availability of funds and Bolivia's progress in attaining the objectives of the anti-narcotics program.²²⁵

The increased militarization of the drug control effort understandably raised concerns among the Bolivian population. Because it was under military control from 1964 to 1982, Bolivia's decade-old democracy does not take increased military action lightly. Bolivia also remembers U.S. military involvement in other volatile Latin American situations, such as in Nicaragua, El Salvador, Guatemala, and Panama. Increased military aid from the United States thus raises multiple concerns among Bolivians, who value highly their democracy and sovereignty in light of their tumultuous past.²²⁶

C. Inter-American Regional Action

On the regional level, several initiatives have been developed to address the drug issue in Latin America. The first such agreement was the South American Agreement on Narcotic Drugs and Psychotropic Substances (hereinafter ASEP), created in 1976 by ten South American countries.²²⁷ By coordinating studies and programs concerning the needs of the member states, ASEP has attempted to promote cooperation among the countries of the

224. Declaration of Cartagena Concerning the Production of, Trafficking in and Demand for Illicit Drugs, Feb. 15, 1990, Hein's No. KAV 2908, Temp. State Dept. No. 90-88 [hereinafter Declaration of Cartagena]. The Cartagena Agreement states: "The control of illegal trafficking in drugs is essentially a law enforcement matter. However, because of its magnitude and the different aspects involved, and in keeping with the sovereign interest of each State and its own judicial system, the armed forces in each of the countries, within their own territory and national jurisdictions, may also participate. The Parties may establish bilateral and multilateral understandings for cooperation in accordance with their interests, needs, and priorities." *Id.* at 6.

225. Supplemental Agreement, *supra* note 205, at Annex III, 3.

226. As the Cold War ended, the U.S. Armed Forces became more active in anti-drug efforts. Klepak, *supra* note 8. The U.S. military's main contributions have been detecting and monitoring equipment, as well as intelligence information. Newman, *supra* note 4, at 41. In 1994, however, the drugs portion of the defense budget was cut, as were programs of assistance to those cooperating with the U.S. Armed Forces in drug interdiction. Klepak, *supra* note 8. But, although the U.S. military is reducing its participation in combating drug trafficking, worldwide military involvement in drug control is growing. *Id.*

227. Irving Tragen, *World-Wide and Regional Anti-Drug Programs*, in *DRUGS AND FOREIGN POLICY*, *supra* note 7, at 155, 172; see also C.N. Cagliotti, *Cooperation between South American Countries in the Struggle Against Drug Abuse and Illicit Drug Trafficking*, United Nations Bulletin on Narcotics, Vol. XXXIX, No. 1, Jan.-Mar. 1987, pp. 61-67 (describing the ASEP program).

continent.²²⁸ Similar multi-country programs were created in the Caribbean and in Central America.²²⁹

The inter-American region, comprised of South America, Central America, the Caribbean, and North America, initiated a regional program in 1986. The Organization of the American States (hereinafter OAS) adopted the Inter-American Program of Action of Rio de Janeiro against the Illicit Use and Production of Narcotic Drugs and Psychotropic Substances, and Trafficking Therein (hereinafter Program of Rio). It also set up the Inter-American Drug Abuse Control Commission (hereinafter CICAD) to implement the program.²³⁰ The Program of Rio developed long-term measures to reduce drug supply and demand at the national and regional levels.²³¹ It recommends that governments establish commissions to implement national efforts and also specifies regional measures to support national programs, with CICAD serving as the overall monitor and coordinator.²³²

In 1990, at the Meeting of Ministers Alliance of the Americas Against Drug Trafficking in Ixtapa, Mexico reaffirmed the goals of the Program of Rio.²³³ As in the Program of Rio, the CICAD was

228. ASEP supports seven training centers in South America: (1) treatment and rehabilitation in Buenos Aires, Argentina; (2) preventive education in Caracas, Venezuela; (3) suppression of illicit drug trafficking in Lima, Peru; (4) documentation in Buenos Aires; (5) customs in Brasilia, Brazil; (6) training of dogs for anti-drug law enforcement in Buenos Aires; and (7) regulation of the use of licit drugs in Santiago, Chile. Tragen, *supra* note 227, at 172-73.

229. The Secretariat of the Heads of Government of the Caribbean Community (CARICOM) developed a Caribbean regional program to deal with law enforcement, epidemiology, education, treatment and rehabilitation. *Id.* at 173. Since the mid-1980s, extensive programs in each of these fields have been started. *Id.* In Central America, the governments of Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua established the Permanent Central American Commission for the Eradication of the Production, Traffic, Consumption and Use of Narcotic Drugs and Psychotropic Substances, and Related Offenses (CCP) in December 1990. *Id.* The goal of the CCP is to establish cooperation between the governments to deal with common drug issues. *Id.* The CCP has met several times and is developing its organization and working on a program of action. *Id.*

230. *Id.* For texts of the Inter-American Program of Action of Rio de Janeiro Against the Illicit Use and Production of Narcotic Drugs and Psychotropic Substances, see Resolution AG/Res. 813 and 814 of the OAS General Assembly. OAS Resolution AG/Res. 813 (XVI-O/86) created the CICAD. *Id.* at 183 n.39.

231. The Program of Rio placed the highest priority on efforts to reduce demand, including education for prevention, treatment, and rehabilitation. Tragen, *supra* note 227, at 174.

232. *Id.* at 173. The Program of Rio also highlighted the need to integrate legislation among member states, authorize the forfeiture of assets derived from illicit drug trafficking, control precursors and other chemicals used in the production of narcotic drugs and psychotropic substances, support crop substitution and eradication of illicit production, and fashion effective cooperation among anti-drug agencies among countries of the region. *Id.* at 174-75.

233. *Id.* at 173.

directed to coordinate its efforts with other multilateral worldwide, regional, and sub-regional organizations working on the drug problems of the inter-American region.²³⁴ Because problems are similar at the worldwide and regional levels, the governments encouraged inter-agency cooperation and coordination.²³⁵ The Meeting of Ministers ranked ratification of the 1988 U.N. Convention Against Illicit Traffic as a top priority for OAS member states.²³⁶ The CICAD adopted five priority measures to implement the programs of Rio and Ixtapa: legal development, education for prevention, community mobilization, a uniform inter-American statistical system, and an inter-American drug information system.²³⁷

The first Andean drug summit meeting assembled in Cartagena, Colombia, on February 15, 1990.²³⁸ The summit reflects positive regional efforts to attack drug trafficking from both the supply and demand sides of the problem, while also recognizing the economic roots of the issue. The presidents of Bolivia, Peru, Colombia, and the United States pledged to cooperate in a joint attack against every facet of the drug trade and to exchange information on the flow of precursor chemicals and drug money.²³⁹ In the Declaration of Cartagena, the parties agreed to work to reduce demand for illicit drugs, to act within a framework that respects human rights, and to work together to increase trade, development, and the marketing of new exports.²⁴⁰ The United States agreed to finance activities fostering sound economic policies, including programs for alternative development and crop substitution, as well as to facilitate private investment in areas where economic conditions are favorable. The parties reaffirmed their goals of reducing the net cultivation of coca, cooperating in law enforcement, and increasing public awareness of drug control issues.²⁴¹

This summit provides a stark, yet workable, outline for future action between the Andean countries and the United States. If the United States is to remain involved in the South American drug production network, which appears likely, it must continue

234. *Id.* at 174.

235. The CMO and the Global Plan of Action, adopted by the U.N. in 1987 and 1990 respectively, are very similar to the Programs of Rio and Ixtapa. *Id.*

236. *Id.* at 175.

237. For a summary of these measures, see *id.* at 175-79. The 1988 U.N. Convention serves as the juridical framework for the legal development adopted by the CICAD. *Id.* at 175-76.

238. Raphael F. Perl, *U.S.-Andean Drug Policy*, in *DRUG TRAFFICKING IN THE AMERICAS*, *supra* note 7, at 26.

239. *Id.*

240. *Id.*

241. *Id.*

to demonstrate its cooperation in the multifaceted, long-term struggle against all parts of the drug situation. The Andean summit of 1990 should facilitate broader levels of communication and coordination, if vigorously supported by the Andean countries themselves. Thus, U.S. and international economic aid to Andean nations should no longer hinge on cooperation in the U.S. war on drugs and should instead be provided to tackle Andean underdevelopment and dependency on the coca trade.

In 1994, the heads of the governments from the Western Hemisphere attended the Summit of the Americas to address problems throughout the region.²⁴² The governments pledged to strengthen enforcement cooperation and to act against various criminal problems.²⁴³ The Plan of Action addressed the problem of corruption in both public and private sectors as a threat to democracy and government legitimacy.²⁴⁴ Governments agreed to combat illicit drug trafficking through a broad hemispheric strategy designed to reduce drug use and production.²⁴⁵ The

242. Summit of the Americas: Declaration of Principles and Plan of Action, Dec. 11, 1994, 34 I.L.M. 808 (1995) [hereinafter Summit of the Americas].

243. Bruce Zagaris, *International Security in the Post-Cold War Era: Can International Law Truly Effect Global Political and Economic Stability? Constructing a Hemispheric Initiative Against Transnational Crime*, 19 FORDHAM INT'L L.J. 1888, 1892 (1996).

244. Corruption may be reduced through the modernization of the state, including deregulation, privatization, and simplification of government procedures. *Id.* The governments agreed to a number of initiatives to reduce corruption in the Americas, such as promoting open discussion of significant problems confronting government; ensuring proper oversight of government functions by strengthening internal mechanisms; asking governments of the world to adopt and enforce measures against bribery in all financial or commercial transactions with the states of the hemisphere and to invite the OAS to establish liaison with the Organization for Economic Cooperation and Development; and developing within the OAS a hemispheric approach to acts of corruption in both the public and private sectors that would include extradition and prosecution of individuals so charged, either through negotiation of a new hemispheric agreement or through new arrangements within existing frameworks for international cooperation. *Id.* at 1892-94; see Summit of the Americas, *supra* note 242, at 818-19.

245. Summit of the Americas, *supra* note 242, at 819. The Summit of the Americas stated its purpose:

Recognizing the pernicious effects of organized crime and illegal narcotics on our economies, ethical values, public health, and the social fabric, we will join the battle against the consumption, production, trafficking and distribution of illegal drugs, as well as against money laundering and the illicit trafficking in arms and chemical precursors. We will also cooperate to create viable alternative development strategies in those countries in which illicit crops are grown. Cooperation should be extended to international and national programs aimed at curbing the production, use and trafficking of illicit drugs and the rehabilitation of addicts.

Id. at 811.

strategy includes new enforcement methods to disrupt drug trafficking and money laundering networks and to prosecute participants in those activities.²⁴⁶

The governments agreed to ratify the 1988 U.N. Convention Against the Illicit Traffic of Narcotics and Psychotropic Substances, thereby agreeing to international standards of drug control and enforcement. With respect to illicit drug production and trafficking, the governments also agreed to identify the region's narcotics trafficking and money laundering networks, prosecute their leaders, and seize assets derived from these activities. They decided to adopt programs to prevent and reduce the demand for illicit drugs, as well as to develop effective and environmentally sound national strategies to prevent or substantially reduce the cultivation and processing of crops for the illegal drug trade. The governments focused on national and international support for development programs that create viable alternatives to drug production. They agreed to control precursor chemicals and support comprehensive drug interdiction strategies. They also agreed to strengthen efforts to control firearms, ammunition, and explosives to avoid their diversion to drug traffickers and criminal organizations. Finally, the governments pledged to hold a hemisphere-wide conference of donors, including multilateral development banks and U.N. agencies, to seek resources for alternative development programs aimed at curbing the production, trafficking, and use of illicit drugs, as well as the rehabilitation of addicts.²⁴⁷

While the Summit's Plan of Action developed a regional strategy for combating illicit drug trafficking, the governments themselves still bear the responsibility for implementing the Plan.²⁴⁸ The OAS maintains a supportive role in protecting human rights, working against corruption, and eliminating the threat of national and international terrorism. The CICAD has an active role in combating drug trafficking, and the International Development Bank has a significant partnership role in promoting and protecting human rights and fighting corruption and drug trafficking.²⁴⁹ The Plan of Action, however, does not bind the governments and presents no real obligations. The lack of binding duties on the various governments reflects disagreement

246. Zagaris, *supra* note 243, at 1894.

247. Summit of the Americas, *supra* note 242, at 820; see Zagaris, *supra* note 243, at 1895. The Summit of the Americas also addressed the issues of terrorism, human rights, and environmental protection. See generally Summit of the Americas, *supra*.

248. Zagaris, *supra* note 243, at 1898.

249. *Id.*

over some of the goals and compromises needed to enforce the law.²⁵⁰

Although it lacks enforcement provisions, the Summit of the Americas represents a sound regional effort to address the illicit drug trafficking issue and focuses attention on the heart of the problem: criminal drug trafficking. By stating aims to curtail the money laundering and human rights abuses associated with the drug trade, the Summit focuses attention on the most detrimental aspects of the illicit drug industry. Organized crime and drug addiction represent much larger problems to national and international security than coca production in Bolivia. Coca has, after all, been produced and chewed for centuries. Why should Bolivia now pay such a high price for a foreign demand of its only profitable crop? While many believe the drug problem should be attacked at the root of production, equal numbers believe it should be attacked at the apex of consumption. This age-old debate is fruitless, because both supply and demand contribute to the massive scope of the international drug problem. By addressing both aspects of the problem, the multilateral initiatives of the Summit of the Americas offer an effective and comprehensive approach to attacking this debilitating regional problem.

V. PROPOSALS FOR FUTURE LEGISLATIVE ACTION

As Bolivia and other coca-producing countries respond to international pressure, their own national and regional drug legislation must continue to be a priority. The current effectiveness of such laws and law enforcement raises serious doubts, making new approaches to the coca issue necessary.

A. *Bolivian Legislation: An Exercise in Futility?*

If Bolivia wishes to control the cultivation of coca leaves used for cocaine and rid itself of criminal narco-trafficking organizations, the central government will have to improve its enforcement tools. Bolivia cannot continue to allow criminal drug organizations to infiltrate its political and economic systems

250. *Id.* Zagaris notes that the Plan of Action's lack of real obligations by the governments also "reflects the immature status of hemispheric mechanisms and institutions on enforcement." *Id.* Zagaris recommends the creation of an Americas Committee on Crime Problems under the auspices of the OAS, to discuss and take action on questions of common criminal justice needs, with membership being open to all countries in the Western Hemisphere, and which could emulate the European Committee on Crime Problems. *Id.* at 1898-99.

without formally addressing their presence. Although Bolivia verbalizes support for the international fight against cocaine trafficking, its domestic policies do not yet reflect a serious national commitment to stopping coca cultivation.²⁵¹ Bolivia has not tried to hide its dependence on foreign aid and has even conditioned its cooperation in the fight against drugs on international financial assistance.²⁵² In attempting to balance a strong cultural tradition of coca-use with the modern threat of cocaine trafficking, Bolivia appears perplexed. Although Bolivians understand the tensions, they question the best approach to take.

Ley 1008 represents an effort by Bolivia to comply with U.S. and international demands concerning coca. Although Ley 1008 asserts the important traditional uses of the coca leaf and focuses on legal uses before describing illegal uses of coca, the legislation does not satisfy the general Bolivian population. Ley 1008 has international appeal, but does not give due attention to the underlying economic conditions perpetuating the coca industry. In stating the need for crop substitution and alternative development, Ley 1008 follows U.S. policy by suggesting that crops besides coca will be able to satisfy farmers' financial needs.²⁵³ Bolivia's rural poverty, however, will not be solved in the short term through alternative development and economic reactivation; nor will its coca cultivation diminish through such short-term measures.²⁵⁴ Ley 1008 is thus unsuccessful in its anti-drug enforcement efforts.

Bolivia's legislation should reflect long-term movement away from supplying coca to the cocaine industry.²⁵⁵ Eradication

251. Bolivia has essentially refused to impose eradication on well-organized and politically powerful coca growers. The government briefly attempted an eradication in February 1994, but was met with violent opposition. Falco, *Passing Grades*, *supra* note 2, at 18-19.

252. Bolivia depends heavily on foreign aid to keep its legal economy afloat. *Bolivia: Americas Review* 1997, Am. Rev. World Info., Aug. 1, 1996, at 10, available in 1996 WL 9628122 [hereinafter *Americas Review*]. According to Bolivia's Central Bank, Bolivia's foreign debt will reach \$4.65 billion in 1996, with foreign debt payments approaching \$379 million. Economic growth, which has not varied greatly in the last decade, is expected to continue at four percent. *Id.*

253. Evo Morales, a popular *cocalero* organizer, said: "As long as there are no alternatives [coca growers] can make a living from, they will continue producing coca." Long, *supra* note 98.

254. The growth rate for Bolivia's legal agricultural industry was estimated to be a meager 1.7% in 1995, suffering in recent years from drought. *Americas Review*, *supra* note 252. Although the Bolivian economy has recovered during the 1990s, most analysts link this success to Bolivia's tremendous income from coca. Klepak, *supra* note 8.

255. Coca itself is obviously not the problem, but its profitability today is dominated by the cocaine industry. President Gonzalo Sanchez de Lozada focused Bolivia's problem with the connection between coca and cocaine: "Our big problem' . . . 'is that the Bolivian people are against narco-trafficking, but they

should not be the central focus of any legislation, national or international. Imprisonment of *cocaleros* is also counterproductive, leading to possible human rights violations as well as increasing the number of farmers needed to produce a certain amount of cocaine. Paying farmers for voluntary eradication of coca crops also may cause increased production, as farmers produce to be paid for eradicating; additionally, government payment for eradication will unlikely meet the prices for illicit sales.²⁵⁶

Bolivia's present goals should be self-made and should reflect the involvement of the many parties involved in the coca and cocaine industry. Bolivia should focus on assessing the gravity of the problem. Accurate estimates are needed for current levels of production; types of organizations involved in producing legal and illegal coca; money generated by the illicit trade that re-enters the Bolivian economy; foreign involvement in present anti-drug projects; and overall domestic attitudes toward reducing coca cultivation. Without assessing these factors, Bolivia's anti-drug legislation will continue to look like a foreign-imposed law and will likely remain largely unenforced. Bolivia needs a national consensus to address its coca problem. It must include the *cocalero* unions, various peasant organizations, higher-level drug organizations, and the general public. Each of these groups represents too large a faction in Bolivian politics to be silenced through the legislative process.

B. *Inter-American Legislation: A Call to Cooperate*

The cocaine trade cannot be controlled by any one country, however, as the U.S. policy over the last twenty years has demonstrated. Thus, international involvement is absolutely necessary. The 1988 U.N. Convention creates international norms for the control of illicit drugs. Many key countries, including Bolivia, have adopted these norms by ratifying the Convention. Aside from creating international norms and goals for curbing drug trafficking, however, the U.N. is a poor vehicle for enforcement of international law. No single enforcement policy can effectively curb illicit drug trafficking in each country. Instead, the majority of multilateral efforts to curb the illicit drug trade should take place on a regional level.

are for these [coca] farmers.'" Falco, *Passing Grades*, *supra* note 2, at 19 (quoting President Lozada).

256. Perhaps the only successful example of a large-scale reduction in illicit drug cultivation in recent years is Thailand, where fast economic growth created opportunities more profitable than opium farming. Falco, *U.S. Drug Policy*, *supra* note 3, at 126.

In the case of cocaine, the Andean nations should enact, and subsequently enforce, strong laws to address the transnational issue of drug trafficking. The OAS has already created one enforcement vehicle, the CICAD, but its mission is broad and deals with the cocaine issue on the hemispheric level, including all of Latin America, the Caribbean, and the United States.

Regional interests must coalesce into an attack on the drug issue. In the Doctrine of Cartagena, Bolivia, Peru, Colombia, and the United States stated a goal of cooperation and unity in attacking criminal drug trafficking. Competing interests do not allow the Andean states to negotiate on equal footing with the United States, however. The countries are not unified in their stance against cocaine production and distribution. Bolivia and the other Andean nations are threatened by political and economic instability and frustrated by alleged corruption throughout the military and political ranks, a result of criminal organizations' involvement in the cocaine traffic. The United States, on the other hand, is threatened by violent crime caused by the drug trade and a large addicted population. For the last twenty years, these differences have not been reconciled and have led to a decreased understanding between the nations and an increase in U.S. pressure for a foreign solution.

Therefore, the United States should reduce its visible enforcement role in the Latin American drug producing nations and maintain a more supportive role. The United States should continue to provide funding, technical assistance, research, and recommendations to international loan organizations, such as the World Bank and the International Development Bank. The burden of solving the current cocaine trafficking problem should rest on the shoulders of those countries whose economic, political, and social viability is most affected: Bolivia, Peru, and Colombia. These countries will only make efforts to solve the perceived cocaine problem, however, if they consider it in their self-interest. These nations should increase regional efforts to address both their collective and individual interests. Regional efforts should include increasing long-term national and regional economic growth, combating corruption resulting from the drug trade, and sharing more information and resources.²⁵⁷ Although obstacles exist to any regional proposal, regional unity and action

257. Colombia's Vice Minister for Justice proposed that Latin American countries agree on their own criteria before discussing counter-narcotics cooperation with the United States: "It's necessary that before starting talks with Washington, Latin America agrees on a unified criteria for the battle against the narcotics trade." *Colombia Seeks Unified Latin Stance Against Drugs*, Reuters N. Am. Wire, Oct. 15, 1996, available in LEXIS, News Library, TXTNWS File.

against criminal drug trafficking are essential to reaching a solution that will address issues of regional import.

VI. CONCLUSION

An array of international, regional, and domestic laws currently attempt to control the illicit trafficking of cocaine. Much of this legislation focuses on the source countries of Bolivia, Peru, and Colombia. Bolivia's situation is representative of the other Andean countries' struggle with the cocaine trade and can be used as a model for evaluating current legislation in the region. Bolivia's production of coca must be understood in the context of centuries of cultural traditions dependent on the coca leaf. Bolivia's stagnated economic development since the era of Spanish colonial domination forms the basis of its present economic dependence on coca and cocaine production. Most recently, Bolivia's enactment of Ley 1008 and ratification of international and U.S. treaties represent the government's acceptance of the international drug control strategy. Domestically, however, the Bolivian government faces a wall of multi-level opposition to international and national drug control efforts.

Bolivia's situation appears truly impossible. Caught between internal and multinational pressures and demands, the Bolivian government is currently trying to appease both domestic and international actors. To obtain the international loans needed for economic development, the only real solution to illicit drug production, Bolivia must prove its commitment to stopping illicit coca production. To appease coca growers protesting increased repression and eradication of their coca crops, Bolivia must provide alternative development opportunities that are impractical without international financial assistance. Domestic support in Bolivia favors the *cocaleros* and opposes international, especially U.S., intervention.²⁵⁸ Cocaine, after all, is not Bolivia's problem; criminal organizations trafficking cocaine are every country's problem.

The solution to cocaine trafficking is unworkable in the current unilateral and bilateral framework the United States has created.²⁵⁹ It is unworkable in the context of hinging

258. Falco, *Passing Grades*, *supra* note 2, at 19.

259. Emphasizing that both suppliers and consumers are responsible for the international drug crisis, Mexican Attorney General Enrique Alvarez del Castillo criticized U.S. anti-drug policy in Latin America: "[U]nilateral measures, positions that slander and intimidate, threats that offend the sovereignty of

international economic aid for development on Bolivia's cooperation in the war against drugs. Furthermore, it is unworkable in attempting to increase domestic repression in Bolivia against small coca farmers and cocaine producers. These measures have not only proved unsuccessful over the last twenty years, but also continue to engender hostility among the Bolivian population.

Instead, legislation should follow the lead set by the Andean Summit and the Summit of the Americas, with multilateral initiatives implemented on a regional and national level. The Andean countries must participate actively and forcefully in an unprecedented manner, however. The United States should allow these countries room to negotiate freely without economic pressures contingent on eradication goals. Until the region and the specific coca producing nations themselves determine what their involvement should be, the "war on drugs" will continue to be a U.S.-imposed "war" with a half-hearted regional support framework. Bolivia is in a difficult situation complicated by economic incentives and political demands. Until it is able to negotiate freely, however, and to address the many conflicting elements of its current situation, Bolivia will remain dependent on coca and subject to international demands.

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peoples and the dignity of individuals, must not be tolerated." Paul Lewis, *Drugs Pit Baker vs. Third World at U.N.*, N.Y. TIMES, Feb. 21, 1990, at A3.

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