ICEERS INTERNATIONAL CENTER FOR ETHNOBOTANICAL EDUCATION RESEARCH & SERVICE

Legal certainty for plants and plant-based preparations under the international drug control conventions

Written contribution to the Expert Panel established pursuant to Commission on Narcotic Drugs resolution 68/6
Submitted by the International Center for Ethnobotanical Education, Research, and Service (ICEERS), NGO in consultative status with ECOSOC

1. Who we are

ICEERS is a non-profit organization in consultative status with ECOSOC since 2016, working on the science, policy and legal status of plants used in Indigenous peoples' traditional medicine systems. Through its Ayahuasca Defense Fund, ICEERS has supported the defense of more than 480 people in proceedings in over 49 countries involving ayahuasca, iboga, peyote, psilocybin-containing mushrooms, coca leaf and other plants. This contribution highlights issues of practical implementation, without advocating for any amendments to existing treaties or changes to current scheduling.

2. The implementation gap: no agreed criteria for plant material

The Schedules list substances. The 1961 Convention names the three plants it controls; the 1971 Convention distinguishes "natural material" from natural or synthetic substances yet lists no natural material. Nowhere has the system agreed on how the Schedules apply to plants, plant-based preparations, extracts, isolated alkaloids and precursors. The INCB itself has noted "a lack of clarity with regard to the control status of the plants at the national or the international level" (Report for 2012, par. 329).

In our casework, the same conduct — importing a decoction for ceremonial use — has led to acquittals in Spain and to a prison sentence in Portugal, neither of which has plants scheduled locally. The outcome depends on the airport, the laboratory and the courts, not on the conventions. Such implementation is neither "balanced" nor "evidence-based" (resolution 68/6) and leaves unprotected a "basic concept" of every legal system (1988 Convention, art. 3(2)): legality.

3. Plants and plant-based preparations used in traditional medicine

Status. Apart from cannabis, opium poppy and coca bush, no plant is under international control. The INCB has stated that "no plants are currently controlled under [the 1971] Convention or under the 1988 Convention" and that "preparations (e.g. decoctions for oral use) made from plants containing those active ingredients are also not under international control" (Report for 2010, para. 284; 2012, para. 329). The Commentary on the 1971 Convention concurs: "the inclusion in Schedule I of the active principle of a substance does not mean that the substance itself is also included therein", "in accordance with the traditional understanding" of international drug control (art. 32, comment 12); it had infusions and beverages in mind and added that tolerating their use "would not require a reservation". States that wished to control such material have had to name the plants botanically.

Barrier. In practice, customs services, laboratories and prosecutors extend the Schedules by analogy (for example, ayahuasca: "it contains DMT, therefore it is DMT"), charging trafficking, with pre-trial detention and penalties designed for organized crime. The total weight of the liquid is imputed as the weight of the controlled substance. Traditional medicine practitioners are the most exposed. Some courts have found the

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conduct not punishable, but only after months of detention; others have convicted Indigenous healers and travellers by reading *preparation* far beyond its treaty meaning.

What has worked. Express, prospective regulation: Brazil's CONAD Resolution 1/2010; Peru's declaration of the traditional knowledge and uses of ayahuasca as cultural heritage (2008); the article 32 reservations of Mexico, Peru, the United States and Canada; the exemption in *Gonzales v. O Centro* (2006). The Commentary on the 1961 Convention already recognizes that "medical purposes" may take into account "legitimate systems of indigenous medicine" (art. 4, comment 12).

4. Coca leaf after the 2025 critical review

WHO Expert Committee on Drug Dependence found that traditional use "by chewing or in tea does not appear to pose a particularly serious public health risk", recognized the leaf's "important cultural and therapeutic significance for Indigenous peoples", and nevertheless recommended retaining it in Schedule I on the criterion of convertibility, in the context of rising cocaine production. The Commission took note in March 2026. This contribution addresses two implementation questions the review left open, one of which WHO itself assigned to States and the Commission: criminal treatment.

The criterion. The Committee found that "chemical transformation of these subspecies of coca leaf into a controlled drug is not required" and that extraction "does not involve any modification of the molecular structure of the extracted alkaloids", yet applied the WHO Guidance definition of a "convertible" substance as one a clandestine manufacturer can "transform" into controlled drugs (Guidance 2010, para. 49; 1961 Commentary, art. 3, comment 13). The three authentic texts of article 3(3)(iii) read "convertible into a drug", "*transformable en un stupéfiant*" and "*puede ser transformada*"; the Convention reserves "recoverable" (arts. 2(9), 3(4)) and "extraction of alkaloids" (art. 27) for what is done with coca leaf; the Guidance groups convertible substances with precursor control (para. 47); and the Commentary's examples are chemical derivatives. A criterion conceived for derivatives and precursors has been applied to a plant without being defined for plants. Nor does the economic test hold for consumer products as shown by the Committee's own composition data (cocaine 0.11–1.02% of dry weight): one kilogram of cocaine would require roughly 900 kilograms of leaf.

Criminal treatment. Outside the Andean region, coca leaf, tea, flour and *mambe* are prosecuted as cocaine, by gross weight; our casework includes Andean migrants and Indigenous travellers charged with trafficking in Europe, North America and Asia. Carrying commercial coca tea across a border, or ordering it online, has sufficed for conviction. Bolivia (Law 1008, art. 3) and Argentina (Law 23.737, art. 15) already distinguish the leaf in its natural state from the leaf under chemical transformation. The 1988 Convention makes cultivation an offence only "for the purpose of producing narcotic drugs" (art. 3(1)(a)(ii)) and requires due account of "traditional licit uses" (art. 14(2)), language reaffirmed at UNGASS 2016 together with the UNDRIP.

5. Recommendations

The Panel may wish to recommend that:

1. **The Commission** request WHO, the INCB and UNODC, with independent scientific and legal expertise and the participation of Indigenous Peoples, to prepare technical guidance on how the Schedules

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apply to plants, plant-based preparations, extracts, isolated alkaloids and precursors, so that States' "sufficient flexibility" rests on shared, rights-consistent criteria, not on divergent enforcement.

2. **The INCB** reaffirm its 2010 and 2012 findings that plants and plant-based preparations not listed in the Schedules are outside international control, and clarify that the term "preparation" does not extend the Schedules to unlisted plant material.

3. **The Commission and INCB** clarify that plants and their traditional preparations fall outside the definition of NPS: conflating ancient botanical traditions with synthesized designer drugs misinterprets international law and criminalizes Indigenous practices.

4. **States** that decide to control such material do so by express law naming the plant after an evidence-based analysis, prospectively, after consultation with the Indigenous peoples concerned and a human rights impact assessment, with exemptions for traditional and religious use — and refrain from prosecution by analogy (ICCPR, art. 15; 1961 Convention, art. 36(1)(a)).

5. **UNODC, with OHCHR,** develop guidance and technical assistance for customs, laboratories, prosecutors and courts on plant-material cases: quantification of the active principle instead of gross weight, avoidance of pre-trial detention, alternatives to conviction or punishment (1988 Convention, art. 3(4)(c); UNGASS 2016), and intercultural safeguards — anthropological expertise, interpreters, notice to Indigenous authorities (ILO Convention 169, arts. 8–10).

6. **WHO, with the INCB,** review the 2010 Guidance to distinguish convertibility (chemical transformation, the domain of precursor control) from the extraction or recovery of an alkaloid already present in a plant, and assess "coca leaf preparations" (tea, flour or mambe) separately under the recoverability test of article 3(4) of the 1961 Convention.

7. **The Commission and States** adopt minimum standards for coca leaf in its natural state: no criminalization of possession, transport or consumption for traditional or personal use; the requirement of a purpose of producing narcotic drugs; measurement by recoverable alkaloid rather than gross weight; and protection of migrants and Indigenous travellers.

8. **The Commission** acknowledges that article 49(2)(e) of the 1961 Convention, whose twenty-five-year period expired in 1989, cannot be applied consistently with the "other relevant international instruments" in the Panel's mandate, notably the UN Declaration on the Rights of Indigenous Peoples (arts. 11, 24, 31). Acknowledging its non-application represents coherent treaty implementation and systemic integration.

6. Closing

ICEERS remains at the Panel's disposal for the consultations foreseen in resolution 68/6, paragraph 2, and can provide anonymized case files and an extended, fully referenced version.

Selected references. CND resolution 68/6 (2025). INCB, Reports for 2010 and 2012. UN, Commentary on the 1971 Convention (1976), art. 32, comments 5, 12–13; Commentary on the 1961 Convention (1973), art. 3, comments 9–14; art. 4, comment 12. WHO, Guidance on the WHO review of psychoactive substances (2010); ECDD, 48th meeting, Annex 1 (2025). UNGASS 2016 outcome document, para. 4(i).

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