

ORIGINAL ARTICLE

## Plants, Psychoactive Substances and the International Narcotics Control Board: The Control of Nature and the Nature of Control

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### ABSTRACT

*This article reviews and critiques the International Narcotic Control Board's (INCB) 2010 Annual Report's recommendation about plant materials containing psychoactive substances. It first provides an overview of the United Nations drug control system, then contextualises the INCB's role in the UN system. Through a reading of the text of the INCB's 2010 Report and references to contemporary practices of ayahuasca drinking based in fieldwork, the article shows how this Report fits into the international paradigm of the war on drugs and its conflicts with human rights. It is argued that the Board's recommendation demonstrates an unwarranted attempt to extend the scope of its powers, conflates and thus misrepresents widely diverse plant materials and their effects, fails to distinguish between 'use' and 'abuse' of psychoactive substances and appears to assume that particular elements of culture—specifically, traditions involving psychoactive substance use—are, or should be, static, eternally frozen in time and place.*

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The use of psychoactive plants or fungi to alter consciousness is probably a nearly universal human cultural activity.<sup>1</sup> Ethological evidence of the consumption of psychoactive plants among a variety of animal species,<sup>2</sup> as well as archaeological evidence of early human substance use,<sup>3</sup> suggests that the roots of such practices are a longstanding part of the cultural history of humanity and cannot be reduced to some degenerate or delinquent modern phenomenon.<sup>4</sup> Among the varied reasons that humans have collected, cultivated, prepared, exchanged and consumed psychoactive plants and derived materials, religious or spiritual uses are at least as old and important as explicitly medical or other therapeutic uses.<sup>5</sup> Furthermore, for centuries, such spiritual uses of psychoactive plants have typically been regulated by cultural and informal means of control, not by criminal law.

However, in the 20<sup>th</sup> century, an international consensus emerged to limit the consumption of certain objectionable psychoactive substances exclusively to medical or scientific uses, and to use criminal law to punish all other types of use. This consensus was achieved as part of a broader set of trends in modern global economics and politics in the 19<sup>th</sup> and 20<sup>th</sup> centuries, including the consolidation of the nation-state geopolitical system, the economic dominance of Euro-American industrial capitalism, the rise of professionalisation of medicine and policing and the epistemic hegemony of science as the sole source of authorised knowledge. In the realm of drug policy, these trends culminated in the establishment of the modern drug control regime, whose foundations are three treaties negotiated under the auspices of the United Nations,<sup>6</sup> which consolidated, superseded and built upon a series of international drug control instruments from earlier in the 20<sup>th</sup> century.

The International Narcotics Control Board (INCB) was established under the terms of the 1961 Single Convention on Narcotic Drugs from an amalgamation of earlier administrative organs of international drug control into a unified supra-national regulatory body.<sup>7</sup> Its role was to monitor the implementation of the treaty, and ensure that controlled substances were used only for medical or scientific purposes.<sup>8</sup> The Board was later given mandates and

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1 Andrew Weil, *The Natural Mind: A New Way of Looking at Drugs and the Higher Consciousness*, Houghton Mifflin, 1972.; see also, Russil Durrant and Jo Thakker, *Substance Use and Abuse: Cultural and Historical Perspectives*, Sage Publications, 2003.

2 Ronald K. Siegel, *Intoxication: The Universal Drive for Mind-altering Substances*, 2nd edn, Park Street Press, 2005.

3 Mark D. Merlin, 'Archaeological evidence for the tradition of psychoactive plant use in the old world', *Economic Botany*, vol. 57, no. 3, 2003, pp. 295–323.

4 Antonio Escotado, *A Brief History of Drugs: From the Stone Age to the Stoned Age*, trans. K.A. Symington, Park Street Press, 1999.; Roger J. Sullivan and Edward H. Hagen, 'Psychotropic Substance-seeking: Evolutionary Pathology or Adaptation?' *Addiction*, vol. 97, no. 4, 2002, pp. 389–400.

5 Huston Smith, *Cleansing the Doors of Perception: The Religious Significance of Entheogenic Plants and Chemicals*, Tarcher-Putnam, 2000.; Michael J. Winkelman, *Shamanism: A Biopsychosocial Paradigm of Consciousness and Healing*, 2nd edn, Praeger, 2010.

6 Single Convention on Narcotic Drugs 1961 (as amended by the 1972 Protocol) (30 March 1961), UNTS vol. 520 no. 7515. [hereinafter '1961 Single Convention']; 1971 Convention on Psychotropic Substances (21 February 1971) UNTS vol. 1019 no. 14956. [hereinafter '1971 Convention']; UN Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (20 December 1988) UNTS vol. 1582 no. 27627. [hereinafter '1988 Convention'].

7 William B. McAllister, *Drug Diplomacy in the Twentieth Century: An International History*, Routledge, 2000.

8 1961 Single Convention (n 6) art. 9.

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expanded monitoring functions under the drug conventions of 1971<sup>9</sup> and 1988.<sup>10</sup> Currently, the INCB is the *de facto*, although not uncontested, arbiter of legitimacy for policies and practices governing production, distribution and use of many psychoactive substances in the modern geopolitical context.<sup>11</sup>

In its 2010 Annual Report, the INCB put forward a recommendation ‘that governments should consider controlling [psychoactive] plant material at the national level’.<sup>12</sup> In this article, we review and submit a critique of the INCB’s recommendation about plant materials containing psychoactive substances, contending that both its scope and nature are politically and philosophically problematic. As we will show, the Board’s recommendation demonstrates an unwarranted attempt to extend the scope of its powers, conflates and thus misrepresents widely diverse plant materials and their effects, fails to distinguish between ‘use’ and ‘abuse’ of psychoactive substances and appears to assume that cultural traditions involving substance use are—or ought to be—static, eternally frozen in time and place. Some of these considerations relate to the INCB’s statements in its 2010 Annual Report, while others are broader indictments of the ‘drug war’ paradigm that characterises the international drug control regime and the legal systems of many states.

For illustrative purposes, we will expand on these criticisms by considering the implications the INCB’s recommendation may have, in particular, for contemporary practices of ayahuasca drinking. Ayahuasca is a psychoactive brew generally made from two plants native to the Amazon, *Banisteriopsis caapi* (containing harmala alkaloids) and *Psychotria viridis* (containing dimethyltryptamine, or DMT). The consumption of this brew has been part of several Amazonian traditional indigenous, *mestizo* and urban cultural practices well established in South America.<sup>13</sup> Ayahuasca is a notable example of how a traditionally-used plant substance has been dynamically adapted and reinvented in the modern world, as some of these traditions have been expanding globally since the late 20<sup>th</sup> century.<sup>14</sup> Taking into account diverse contemporary transnational ayahuasca drinking practices, we will illustrate the shortcomings of the INCB’s recommendation with respect to this evolving set of traditions, and analyse the Board’s implicit underlying concept of culture.

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9 1971 Convention (n 6) arts. 16, 18, 19.

10 1988 Convention (n 6) arts. 22, 23.

11 Damon Barrett, ‘Unique in International Relations? A comparison of the International Narcotics Control Board and the UN Human Rights Treaty Bodies’, International Harm Reduction Association, 2008.; Joanne Csete and Daniel Wolfe, ‘Closed to Reason: The International Narcotics Control Board and HIV/AIDS’, Canadian HIV/AIDS Legal Network & Open Society Institute, 2007.

12 International Narcotics Control Board, *Report of the International Narcotics Control Board for 2010* (January 2011) UN Doc. No. E/INCB/2010/1, para. 287.

13 Beatriz C. Labate and Wladimir S. Araújo, *O uso ritual da ayahuasca* [The ritual use of ayahuasca], 2nd ed., Mercado de Letras, 2004.

14 Beatriz C. Labate, *Ayahuasca Mamancuna merci beaucoup: Diversificação e internacionalização do vegetalismo ayahuasqueiro Peruano* (Ayahuasca Mamancuna merci beaucoup: Diversification and internationalization of Peruvian ayahuasca vegetalismo) [Unpublished doctoral dissertation], Universidade Estadual de Campinas, Campinas, Brazil, 2011.; Beatriz C. Labate and Henrik Jungaberle, eds., *The Internationalization of Ayahuasca*, Lit Verlag, Zurich, Switzerland, 2011.; Kenneth W. Tupper, ‘The globalization of ayahuasca: Harm reduction or benefit maximization?’, *International Journal of Drug Policy*, vol. 19, no. 4, 2008, pp. 297–303.

The international drug control regime includes several specialised bodies that are part of the United Nations, such as the Commission on Narcotic Drugs (CND), the UN Office on Drugs and Crime and the International Narcotics Control Board, as well as adjunct agencies such as the World Health Organization (WHO), which provides advice to the CND through its Expert Committee on Drug Dependence. Unlike its predecessor in the earlier part of the 20<sup>th</sup> century, the League of Nations, the UN did not make drug control a defining part of its mission. Rather, drug control within the UN system is technically subordinate to other higher order principles, such as the promotion of human rights, and only one of several mandates of the Economic and Social Council (ECOSOC).<sup>15</sup>

The INCB was created to combine the oversight responsibilities of two earlier drug control bodies, the Permanent Central Opium Board and Drug Supervisory Body, which had monitored compliance with earlier international drug control instruments that (as its name indicates) the 1961 ‘Single’ Convention was designed to amalgamate and replace.<sup>16</sup> As such, the INCB became the ‘independent and quasi-judicial monitoring body’ for the UN’s international drug control system.<sup>17</sup> The Board is made up of thirteen members who are responsible for monitoring compliance with the three UN narcotics control conventions. As part of its monitoring and reporting duties, the INCB issues an annual report that provides information about drug trends and makes recommendations to member states on treaty compliance.

The INCB’s functions are to ensure that adequate legitimate supplies of ‘narcotic drugs’ and ‘psychotropic substances’ (the terms used in the treaties) are available for medical and scientific uses, that the diversion of drugs from licit sources to illicit markets is prevented and that governments are complying with their drug control obligations under the treaties.<sup>18</sup> The INCB’s annual report provides a survey of the current global drug control situation, with detailed data estimates and analyses of production, trade and consumption of controlled substances, and also ‘tries to identify and predict dangerous trends and suggests necessary measures to be taken’.<sup>19</sup> The Board’s recommendations, while not binding, are strong signals to governments, and may be an incentive or justification for particular drug control actions. For this reason, the INCB recommendation to governments regarding certain unscheduled psychoactive plants or derivatives raises troubling questions about the scope of the INCB’s powers, and especially its influence on how states attempt to balance

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<sup>15</sup> Barrett (n 11) p. 29.

<sup>16</sup> Adolf Lande, ‘The Single Convention on Narcotic Drugs, 1961’, *International Organization*, vol. 16, no. 4, 1962, pp. 776–797; see, in particular, pp. 792–3.

<sup>17</sup> International Narcotics Control Board, ‘Mandate and functions’, available at <http://www.incb.orgincb/mandate.html> (date of last access 20 October 2011).

<sup>18</sup> *ibid.*

<sup>19</sup> *ibid.*

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competing imperatives of drug control, crime reduction, public health and human rights.

In order to understand the contemporary international drug control system, it is useful to look at the scheduling of plants and substances in the 1961 Single Convention, which set the basis for future international conventions and defined the roles of institutional drug control bodies such as the INCB and the CND, as well as the advisory responsibilities of the WHO. From a scientific perspective, the 1961 Single Convention exhibits an incoherent and inconsistent attitude towards psychoactive plants by conflating and thus misrepresenting widely diverse plant materials, preparations, derivatives, and their effects. For example, it demands that governments restrict three specifically objectionable plants—the opium poppy (*Papaver somniferum*), the coca bush (*Erythroxylum coca*), and the cannabis plant (*Cannabis* sp.)—and thereby, at least in theory, limit their non-industrial cultivation and uses exclusively to medical or scientific purposes.<sup>20</sup> However, despite the significant pharmacological distinctions, differing risk profiles and different contexts of use among these various ‘narcotic drugs’, the international drug control system lumps together cannabis, opium poppy straw and heroin, and coca leaf and crack cocaine, all within the same schedule—Schedule I—and obliges governments to treat them similarly.<sup>21</sup> In its 2010 Annual Report, the INCB continues this institutional tradition of associating pharmacologically disparate substances by representing a broad set of them in a homogenising characterisation—in this case, ‘plant materials containing psychoactive substances’<sup>22</sup>—and thereby attempting generically to warrant their recommended ‘control’ (i.e., criminal or administrative sanctions) by individual states regardless of their unique properties, including both potential risks and benefits, and different contexts of use.

Yet despite the status of opium poppy, coca and cannabis as a uniquely tripartite axis of UN-anointed ‘evil’ in the plant kingdom,<sup>23</sup> they are only three of the scores of plants or fungi that peoples around the world have variously exploited to stimulate, sedate, palliate and elate themselves. According to some scholars, numerous other kinds of plants, many much more potent or toxic, have been used for both medical and non-medical purposes probably since pre-historic times.<sup>24</sup> However, unlike the three ‘narcotic drug’ plants mentioned above, none of the plants that may be sources for other psychoactive substances listed in the 1971 Convention and the 1988 Convention are explicitly identified as necessitating control.

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20 David Bewley-Taylor and Martin Jelsma, ‘Fifty years of the 1961 Single Convention on Narcotic Drugs: A Reinterpretation’, Series on Legislative Reform of Drug Policies Nr. 12 Transnational Institute, Amsterdam, March 2011.

21 *ibid.*, p. 13. See also David Nutt, et al., ‘Development of a rational scale to assess the harm of drugs of potential misuse’, *The Lancet*, vol. 369, 2007, pp. 1047–53, for a critique of dominant drug policy classifications based on the UN system of control.

22 International Narcotics Control Board (n 12), p. 46.

23 Rick Lines, “‘Deliver us from evil’? – The Single Convention on Narcotic Drugs, 50 years on’, *International Journal on Human Rights and Drug Policy*, vol. 1, no. 1, 2010, pp. 3–14.

24 Escobedo (n 4); Richard E. Schultes, Albert Hofmann and Christian Rätsch, *Plants of the Gods: Their Sacred, Healing, and Hallucinogenic Powers*, 2<sup>nd</sup> edn, Healing Arts Press, Rochester, Vermont, 2001.

Rather, only specified psychoactive substances listed in the convention schedules are proscribed. As described in the Official Commentary to the 1971 Convention,

*[T]he inclusion in Schedule I of the active principle of a substance does not mean that the substance itself is also included therein if it is a substance clearly distinct from the substance constituting the active principle....Neither the crown (fruit, mescal button) of the Peyote cactus nor the roots of the plant Mimosa hostilis nor Psilocybe mushrooms themselves are included in Schedule I, but only their respective active principles, mescaline, DMT and psilocybine (psilocine, psilotsin) (sic).<sup>25</sup>*

In other words, the Official Commentary clarifies that it is the chemical constituents of plants or fungi that were intended for control, not the plant substances themselves. As recently as 2001, the INCB aligned itself with this interpretation in a statement it made that year to the Netherlands' Ministry of Public Health regarding the religious use of ayahuasca by a Dutch chapter of the Brazilian-based Santo Daime church. At that time, the INCB communicated that 'preparations (e.g. decoctions) made of these [*B. caapi* and *P. viridis*] plants, including ayahuasca are not under international control and, therefore, not subject to any of the articles of the 1971 Convention'.<sup>26</sup>

In its 2010 Annual Report, however, the INCB gives governments quite a different signal with respect to plant materials containing psychoactive substances. Although it affirms that plants other than opium poppy, coca bush and cannabis are not explicitly controlled by any of the conventions, the Board identifies a number other plants that contain psychoactive substances, including khat (cathinone and cathine), ayahuasca (DMT), peyote (mescaline), *Psilocybe*, or 'magic' mushrooms (psilocybin and psilocin), ephedra (ephedrine), kratom (mitragynine), iboga (ibogaine), *Datura* species (hyoscyamine and scopolamine), and *Salvia divinorum* (salvinorin A).<sup>27</sup> Furthermore, it asserts that, increasingly, 'such plants are often used outside of their original socio-economic context to exploit substance abusers'<sup>28</sup> and are 'no longer limited to the regions where the plants grow, or to the communities that have traditionally used the plants'.<sup>29</sup> It submits that 'as a result, increased trade, use and

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<sup>25</sup> *Commentary on the Convention on Psychotropic Substances, done at Vienna on 21 February 1976*, United Nations, New York, UN Doc. No. E/CN.7/589, 1976, p. 387.

<sup>26</sup> Herbert Schaepe, 'International control of the preparation "ayahuasca"' [Letter from H. Schaepe, Secretary of the United Nations International Narcotics Control Board to R. Lousberg, Inspectorate for Health Care of the Ministry of Public Health in the Netherlands], Vienna, Austria, 17 January 2001, available at [http://www.bialabate.net/wp-content/uploads/2008/08/letter\\_official\\_position\\_incb\\_regarding\\_ayahuasca.pdf](http://www.bialabate.net/wp-content/uploads/2008/08/letter_official_position_incb_regarding_ayahuasca.pdf) (date of last access 27 October 2011); see also Beatriz C. Labate and Kevin Feeney, 'Ayahuasca and the process of regulation in Brazil and internationally: Implications and challenges', *International Journal of Drug Policy*, vol. 23, issue 2, March 2012, pp. 154–161.

<sup>27</sup> International Narcotics Control Board (n 12), para. 285.

<sup>28</sup> *ibid.*, para. 286.

<sup>29</sup> *ibid.*

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abuse of such plant materials have been noted in many countries',<sup>30</sup> These claims, although not backed by any supporting empirical evidence, led the INCB to recommend for the first time 'that governments should consider controlling such plant material at the national level where necessary'.<sup>31</sup>

Yet ayahuasca brews, khat quids, *Datura* seeds and *Salvia divinorum* leaf extracts are all very different kinds of substances. Their psychoactive chemical components, according to the classifications of modern Western medicine, range from diverse hallucinogenic, stimulant and deliriant alkaloids, to a novel consciousness-altering terpenoid potent in microscopic amounts. Furthermore, the health risks and/or benefits of such plant materials, as with other psychoactive substances, have to do not only with the unique pharmacological profile of each material, but also with the personal background of the individual user and the social and cultural context of consumption. For example, an adolescent with a history of mental illness smoking an *Acacia maidenii* extract (containing DMT) at a music festival for hedonic purposes is different from a healthy adult drinking ayahuasca for spiritual exploration in a ceremony conducted by an itinerant skilled *ayahuasquero* (the term used in South America for a person trained in leading indigenous- or *mestizo*-style ayahuasca ceremonies). Yet, following the INCB's recommendation, governmental 'control' (i.e., criminal or administrative sanctions) of non-medical, non-scientific uses of plant materials in many countries can be expected to cast a wide net, oblivious to distinctions between such types of use.

It is important to note that the INCB does not have the political authority (nor is it part of their competence) simply to add plants containing psychoactive substances to the lists of internationally controlled substances. A United Nations-led process to put any of the aforementioned plants under international control would need to be conducted by the Commission on Narcotic Drugs, but only after a WHO Expert Committee on Drug Dependence 'critical review' report were prepared on the issue and forwarded to the CND for its consideration. Under the 1971 Convention, the CND must accept such communication from the WHO on medical and scientific matters as determinative, but the CND may also bear in mind 'economic, social, legal, administrative and other factors it may consider relevant',<sup>32</sup> and so reject a recommendation where it thinks fit. This in fact happened recently with dronabinol, or synthetic tetrahydrocannabinol (THC), which the WHO's Expert Committee recommended downgrading to a less restrictive schedule class. However, the CND rejected the WHO's advice, ostensibly on the basis of insufficient

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<sup>30</sup> *ibid.*

<sup>31</sup> *ibid.*, para. 287.

<sup>32</sup> 1971 Convention (n 6) art. 3(4).

evidence of safety.<sup>33</sup> Regardless, without a CND directive on scheduling particular plants, individual states are expected to make national drug control decisions on plant materials for their own jurisdictions.

It is into this geopolitical terrain of relative political uncertainty about many psychoactive plants that the INCB has tread, proffering its recommendation for governments to consider controlling plant materials containing psychoactive substances. However, the INCB's overture oversteps the Board's mandate in the international drug control system.<sup>34</sup> The 2010 Annual Report affirms that plants containing controlled drugs are not under international control,<sup>35</sup> so the Board's recommendations on the topic of such uncontrolled materials are unwarranted and beyond the scope of its authority. As a point of comparison, alcohol and tobacco are also dangerous toxic substances derived from plants, typical uses of which pose enormous risks to human health and welfare around the world, but the INCB does not impart recommendations about these substances. Thus, to do so for other plant materials or derivatives not explicitly controlled by the international conventions is an improper attempt by the INCB to exceed its mandated powers.<sup>36</sup>

Given that the INCB's actions in this context arguably exceed its mandate, and that promoting legitimate medical and scientific uses of controlled substances is a core element of the INCB's *raison d'être*, it should be questioned why the Board does not use its influence in this regard and recommend that governments investigate the medical or other therapeutic potential of plants containing psychoactive substances. Traditional indigenous healing practices suggest that plants such as peyote, ayahuasca, iboga, and 'magic' mushrooms may have valuable medical uses.<sup>37</sup> Pioneer clinical research using chemical constituents of some of these psychoactive substances has yielded positive results in treating substance dependence and certain mental illnesses such as anxiety and depression,<sup>38</sup> indicating a need for further research. Likewise, the potential of certain plant-based psychotropic substances to elicit powerful mystical-type or spiritual experiences of enduring

33 Danilo Ballotta, Henri Bergeron and Brendan Hughes, 'Cannabis control in Europe' in S. R. Sznitman, B. Olsson & R. Room (eds.), *A Cannabis Reader: Global Issues and Local Experiences*, European Monitoring Centre for Drugs and Drug Addiction, Lisbon, Portugal, 2008, pp. 99–117.

34 Martin Jelsma, 'Mixed thoughts about the INCB's latest report', Transnational Institute, Amsterdam, March 2011, available at <http://www.tni.org/article/mixed-thoughts-about-incbs-latest-report> (date of last access 30 October 2011); see also International Drug Policy Consortium, 'Response to the 2010 Annual Report of the International Narcotics Control Board', International Drug Policy Consortium, London, UK, July 2011, p. 6.

35 International Narcotics Control Board (n 12), para. 284.

36 Jelsma (n 34).

37 Peter Furst, (ed.), *Flesh of the Gods: The Ritual Use of Hallucinogens*, Praeger, New York, 1972.; Ross Coomber and Nigel South, (eds.), *Drug Use and Cultural Contexts 'Beyond the West': Tradition, Change and Post-colonialism*, Free Association Books, London, 2004.; See also Schultes, Hoffman & Ratsch (n 24).

38 Charles S. Grob, et al., 'Pilot study of psilocybin treatment for anxiety in patients with advanced-stage cancer', *Archives of General Psychiatry*, vol. 68, no. 1, 2011, pp. 71–78.; Deborah C. Mash, 'Ibogaine therapy for substance abuse disorders' in D.A. Brizer & R. Castaneda (eds.) *Clinical Addiction Psychiatry*, Cambridge University Press, Cambridge, 2010, pp. 50–60.; Franz X. Vollenweider and Michael Kometer, 'The neurobiology of psychedelic drugs: Implications for the treatment of mood disorders', *Nature Reviews Neuroscience*, vol. 11, 2010, pp. 642–651.; Michael J. Winkelman and Thomas B. Roberts, eds., *Psychedelic Medicine: New Evidence for Hallucinogenic Substances as Treatments*, Praeger, Westport, Connecticut, 2007.



significance raises intriguing questions about how biochemical and neural substrates may mediate both spirituality and health.<sup>39</sup> Investigating the potential medical and scientific applications of psychedelic substances was once a promising area of academic research, but it was prematurely terminated in the early 1970s due to political concerns about increasing non-medical uses of drugs among young people at the time.<sup>40</sup> However, research into psychedelic medicine is currently slowly re-emerging as a respectable academic pursuit and is producing empirical results that suggest authorities such as the INCB should take both earlier scientific findings and traditional indigenous knowledge claims more seriously. This point is not intended as an endorsement of the INCB's attempts to exceed its mandate, but rather to point out that it does so only in one particular direction. While the Board shows little compunction in calling for greater controls, it seems expressly to ignore the promise of therapeutic, spiritual or other benefits of psychoactive plants containing controlled substances.

Another questionable aspect of the INCB's 2010 Annual Report is its conflation of the concepts 'use' and 'abuse', terms deployed indiscriminately and apparently interchangeably in reference to plant materials containing psychoactive substances. For example, the report 'notes increased interest in the recreational use of such [psychoactive] plant materials'<sup>41</sup> and that 'increased trade, use and abuse of such plant material have been noted in many countries.'<sup>42</sup> However, the INCB presents no evidence on the magnitude of the alleged increase of the 'recreational use' or 'abuse' of substances such as ayahuasca. As far as we know, there is no population-level data collected anywhere in the world on the uses of ayahuasca, 'recreational' or otherwise. Furthermore, the assertion that 'the use of such plant material may have adverse effects on the abuser, including nausea, vomiting, drowsiness, poisoning and flashbacks'<sup>43</sup> demonstrates *a priori* presumptions that such effects are indeed 'adverse' and that the person who may experience them is, circularly, an 'abuser'. It must be noted that uncomfortable physiological effects like nausea, vomiting and diarrhoea are typical among *all* forms of ayahuasca drinking, and cannot necessarily be construed as signs of 'abuse'. Such effects do not seem to indicate any apparent toxicity, causing

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39 Walter N. Pahnke, 'The contribution of the psychology of religion to the therapeutic use of the psychedelic substances' in H. A. Abramson (ed.), *The Use of LSD in Psychotherapy and Alcoholism*, The Bobbs-Merrill Company Inc., Indianapolis, 1967, pp. 629–649.; Rick Doblin, 'Pahnke's "Good Friday experiment": A long-term follow-up and methodological critique', *Journal of Transpersonal Psychology*, vol. 23, 1991, pp. 1–28.; Roland R. Griffiths, et al., 'Psilocybin can occasion mystical-type experiences having substantial and sustained personal meaning and spiritual significance', *Psychopharmacology*, vol. 187, no. 3, 2006, pp. 268–283.; Roland R. Griffiths, et al., 'Psilocybin occasioned mystical-type experiences: immediate and persisting dose-related effects', *Psychopharmacology*, vol. 8, no. 4, December 2011, pp. 649–65.

40 Erika Dyck, 'Flashback: Psychiatric experimentation with LSD in historical perspective', *Canadian Journal of Psychiatry*, vol. 50, no. 7, 2005, pp. 381–388.; Ben Sessa, 'Can psychedelics have a role in psychiatry once again?', *British Journal of Psychiatry*, vol. 186, 2005, pp. 457–458.; See also, Lester Grinspoon and James B. Bakalar, *Psychedelic Drugs Reconsidered*, Basic Books, New York, 1979.

41 International Narcotics Control Board (n 12), para. 286.

42 *ibid.*

43 *ibid.*

neither physical nor psychological harms in healthy people,<sup>44</sup> and in fact often come to be welcomed by regular drinkers of the brew in different contexts, who may regard them as a form of physical or psychospiritual purging.<sup>45</sup> None of this, of course, means that cautions do not need to be applied to the ceremonial uses of ayahuasca or other plant materials. Nevertheless, the INCB's tautological and homogenising characterization of such non-medical substance use practices as 'abuse' seems to be a legacy of a particular world view that guided the construction of the international drug conventions, based in an underlying moralism and pharmacological reductionism. Today, such a conceptual frame is of limited use in comprehending and respecting *bona fide* religious practices or equivalently sincere spiritual or self-actualisation pursuits involving psychoactive plants, which engage the fundamental rights of freedom of religion and thought.

Finally, the INCB expresses a concern that 'plants [containing psychoactive substances] are often used outside of their original socio-economic context to exploit substance abusers'.<sup>46</sup> However, with respect to the transnational expansion of ayahuasca drinking, there are no empirical grounds for the INCB's assertion that people engaging in such practices are often exploited 'substance abusers'. Moreover, this statement also seems indirectly to imply that the expansion of ayahuasca drinking beyond South America is illegitimate, apparently reflecting an assumption that there is only one original fixed and legitimate place of origin for ayahuasca use. This interpretation seems to follow a line of reasoning found in Article 32 of the 1971 Convention, in which states parties were allowed to make reservations for some 'plants growing wild which contain psychotropic substances from among those in Schedule I and which are traditionally used by certain small, clearly determined groups in magical or religious rites',<sup>47</sup> or Article 14.2 of the 1988 Convention, which talks about 'historic evidence' of certain uses,<sup>48</sup> a topic that unfortunately we cannot address in depth here.<sup>49</sup> However, establishing such an alleged point of origin for the use of ayahuasca is difficult, if not impossible, to do. Ayahuasca drinking has a multiplicity of traditional and historical modalities—ranging from a wide spectrum of Amerindian shamanic and healing

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44 Charles S. Grob, et al., 'Human psychopharmacology of hoasca, a plant hallucinogen used in ritual context in Brazil', *The Journal of Nervous and Mental Disease*, vol. 184, no. 2, 1996, pp. 86—94.; Jordi Riba, et al., 'Subjective effects and tolerability of the South American psychoactive beverage Ayahuasca in healthy volunteers', *Psychopharmacology*, vol. 154, February 2001, pp. 85—95.; John H. Halpern, et al., 'Evidence of health and safety in American members of a religion who use a hallucinogenic sacrament', *Medical Science Monitor*, vol. 14, no. 8, 2008, pp. SR15—SR22.

45 Luis E. Luna, *Vegetalismo: Shamanism among the Mestizo Population of the Peruvian Amazon*, Acta Universitatis Stockholmiensis, Stockholm, 1986.; Benny Shanon, *The Antipodes of the Mind: Charting the Phenomenology of the Ayahuasca Experience*, Oxford University Press, 2002.

46 International Narcotics Control Board (n 12) para. 286.

47 1971 Convention (n 6) Article 32.

48 1988 Convention (n 6) Article 14.2.

49 The issue of indigenous peoples' rights to continue the traditional uses of plants has been a perennial concern—and ongoing source of inconsistency—in international drug control efforts, see Bewley-Taylor and Jelsma (n 20) pp. 10—14. Perhaps the most notorious aspect of this debate relates to the practice of coca leaf chewing among Andean and Amazonian peoples, which was explicitly banned by Article 49.1(c) and 49.2(e) of the 1961 Single Convention. This categorical ban against coca contradicts principles of indigenous rights affirmed in the subsequent 1971 Convention and 1988 Convention, and is in direct violation of the 2007 UN Declaration on the Rights of Indigenous Peoples. See Martin Jelsma, 'Lifting the ban on coca chewing: Bolivia's proposal to amend the 1961 Single Convention', Series on Legislative Reform of Drug Policies Nr. 11 Transnational Institute, Amsterdam, March 2011.; James Kirk, 'Coca, cocaine and the rights of indigenous peoples', *Trinity College Law Review*, vol. 10, 2007, pp. 77—97.

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practices, to Amazonian *mestizo* therapeutic uses, to different syncretic Christian ayahuasca religions—from several different countries in South America.<sup>50</sup>

The INCB's 2010 Report's recommendation thus opens the troubling possibility of criminalisation of legitimate cultural practices outside their alleged 'original socio-economic context'.<sup>51</sup> This could potentially render, for example, rituals such as those of some Brazilian ayahuasca religions (e.g., the Santo Daime and the União do Vegetal) permissible only in Brazil, or the ceremonies of itinerant Amazonian *ayahuasqueros* practicing outside their homelands as equivalent to drug trafficking. This view displays no openness to the idea that cultural traditions could migrate to different countries, or could transform themselves in new contexts, nor that modern substance use practices exogenous to one's particular ethnic or cultural heritage could be legitimate in their own right. The INCB's assertions about plant materials, in light of the aforementioned articles of the 1971 and 1988 Conventions, seem to express the problematic idea that 'tradition' is associated with a specific geographic place and that only a particular ethnic or social group, or nation contains an 'authentic' culture. Indeed, the drafters of the 1988 Convention seem to have recognized the difficulties of such essentialist views on the dynamics of culture. The Official Commentary on the 1988 Convention notes that during negotiations on the text of Article 14.2, 'the reference to "traditions" was . . . criticized, as traditions could often be subject to change'.<sup>52</sup> Whether or not the drafters explicitly recognised it, this comment anticipates that future drug control efforts might contribute to the stigmatisation and persecution of certain religious minorities and diaspora communities in a postmodern and transnational world, an outcome incompatible with the principles of the United Nations to uphold basic universal human rights.

The new recommendation of the INCB will certainly not help in accommodating human rights protections for people engaged in these evolving traditions. It is important to remember that in most jurisdictions where ayahuasca drinking has been introduced in the last 20 years and has become a criminal legal matter, such as the Netherlands and the United States, it has typically been hard-fought jurisprudential decisions—not proactive government policies—that have recognised and protected the human rights (i.e., religious freedom) of ayahuasca drinkers.<sup>53</sup> In these cases, as well as in Ireland in 2008 and the United Kingdom in 2011, where religious freedom protections for ceremonial ayahuasca drinking had not yet been established, states have pursued criminal prosecution against members

50 Labate and Araújo (n 13); Labate and Jungaberle (n 14).

51 International Narcotics Control Board (n 12), para. 286.

52 *Commentary on the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, United Nations, New York, UN Doc. No. E/CN.7/590, 1998, p. 295.

53 Beatriz C. Labate, 'The paradoxes of ayahuasca expansion: The UDV-DEA agreement and the limits of freedom of religion', *Drugs: Education, Prevention & Policy*, vol. 19, no. 1, 2012, pp. 19–26; Labate and Feeney (n 26); Labate and Jungaberle (n 13).

of religious groups such as the Santo Daime,<sup>54</sup> who were sincerely following the liturgical and ritual traditions of their faiths. All this has happened despite the fact that the INCB had previously stated that ayahuasca brews were not covered under the 1971 Convention (although it must be noted that INCB rulings on drug control are meant to establish only a minimum standard of compliance, and sovereign governments are always at liberty to be stricter in their drug control efforts).<sup>55</sup>

In conclusion, the 2010 INCB Annual Report's recommendation that governments consider controlling specific psychoactive plant materials at the national level is a manoeuvre that oversteps the INCB's mandate within the UN's drug control system. The Board's approach to plant materials containing psychoactive substances reproduces stereotypes based on unspecified alleged dangers of the use of hallucinogens, and it improperly homogenises different substances. Some of the psychoactive substances the INCB identifies, such as ayahuasca, have been traditionally revered as '*plantas maestras*' (plant teachers),<sup>56</sup> a conceptualisation that stands in stark contrast to the modern drive to eliminate all non-medical, non-scientific uses of such substances from the world.<sup>57</sup> Moreover, the Board's discussion illustrates a deeply flawed assumption underlying the logic of modern international drug control—namely, that cultural practices involving psychoactive substance use have an authentic and pure origin, and must remain static, isolated, limited and discrete. Indeed, today's international drug control regime can be characterised as anthropocentric and ethnocentric, a systemic legacy of the Euroamerican patriarchal and colonial attitude that undesirable things in the world, such as exotic psychoactive plants and the cultural beliefs that embrace them, can be subjugated, controlled or simply eradicated. Rather than perpetuating such ideological beliefs and reflexively exhorting governments to expand domestic 'control' (such as criminalisation) of unfamiliar plants used for spiritual, religious and therapeutic purposes, the INCB might better serve its duty to the public interest by promoting empirically grounded research, encouraging further investigation on these practices, and seeking scientific explanations for the value they have been accorded in traditional and contemporary cultural settings.

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54 S. Peacock, 'Police quiz two following "sacred" drugs swoop in Dartington', *South Devon Herald Express*, 3 September 2010, available at <http://www.thisissouthdevon.co.uk/news/Police-quiz-following-sacred-drugs-swoop/article-2600610-detail/article.html> (date of last access 5 September 2010); Thomas St. John O'Dea, 'Legal update on the Santo Daime case in Ireland', unpublished document, 2008, available at [http://www.bialabate.net/wp-content/uploads/2008/08/O\\_Dea\\_Legal\\_Update\\_Santo\\_Daime\\_Case\\_Ireland.pdf](http://www.bialabate.net/wp-content/uploads/2008/08/O_Dea_Legal_Update_Santo_Daime_Case_Ireland.pdf) (date of last access 26 October 2011).

55 Schaepe (n 26).

56 Luis E. Luna, 'The concept of plants as teachers among four mestizo shamans of Iquitos, northeastern Peru', *Journal of Ethnopharmacology*, vol. 11, no. 2, 1984, pp. 135–56.

57 Kenneth W. Tupper, *Ayahuasca, Entheogenic Education & Public Policy* [unpublished doctoral dissertation], University of British Columbia, Vancouver, BC, April 2011, available at [http://www.kentupper.com/resources/Ayahuasca+Entheogenic+Educ+\\$26+Public+Policy+-+Tupper+2011.pdf](http://www.kentupper.com/resources/Ayahuasca+Entheogenic+Educ+$26+Public+Policy+-+Tupper+2011.pdf) (date of last access 27 October 2011).