

Ayahuasca: From the Amazon to the Global Village

Constanza Sánchez and José Carlos Bouso



Key Points

- The criminal prosecution of ayahuasca users is wrong, illegitimate and futile and must end
- The trend to treat ayahuasca as a controlled substance is wrong and requires review. It cannot be considered as such simply because it contains a substance that is subject to control
- Equating a complex cultural practice, such as the ritual use of ayahuasca, to a single element of the whole (the DMT contained in the drink) is extremely reductionist and misinformed
- The promotion of scientific knowledge about ayahuasca in particular, and about psychoactive plants of traditional use in general, far from contradicting the spirit of the UN drug conventions, could even help safeguard the well-being and health of humankind

Since time immemorial certain indigenous groups have considered ayahuasca a sacred plant. It is a central part in many healing and community integration rituals

Indigenous peoples in the Amazon have used ayahuasca for centuries as a remedy for physical and psychological health, and to ensure the life and wellbeing of their communities. In the past two decades, the use of this decoction has expanded beyond Amazon indigenous spheres. Globalisation, and with it the contact between populations, has facilitated cultural exchange between indigenous traditions and Western practices, which has led to a growing interest in the ritual, religious and therapeutic use of ayahuasca. Religions of Brazilian origin, such as *Santo Daime* and *União do Vegetal* (UDV), whose ceremonies include the ritual use of ayahuasca, have expanded and been established in an increasing number of countries in Europe, the Americas and even Asia. At the same time, there has been a surge in people's interest in attending ayahuasca ceremonies, as well as the number of indigenous healers [*curanderos*] and Western facilitators who offer ayahuasca sessions to a wider and more diverse public. In general, the people who participate in the sessions have a positive perception of its use; while most scientific research over the past decade in the fields of psychopharmacology, neuroscience and clinical psychology supports the subsequent benefits attributed to it. But the increased use of ayahuasca has not been free from challenges, such as its excessive commercialisation in the Amazon, linked to ayahuasca tourism, or the exploitation of natural resources used for its preparation.

Ayahuasca is a psychoactive drink usually obtained from the decoction of two plants: *Banisteriopsis caapi* and *Psychotria viridis*. The latter contains DMT (N,N- dimethyltryptamine), a triptaminic alkaloid controlled under the 1971 Convention on Psychotropic Substances, which has largely passed into national legislation. Despite this, the International Narcotics Control Board (INCB) —the quasi-judicial body responsible for overseeing the implementation of international conventions on drugs— has declared on several occasions that ayahuasca, and other psychoactive plants, are not subject to international control.¹ In recent years, however, there have been an extraordinary number of detentions and judicial prosecutions in Europe, the United States and Latin America for ayahuasca importation and use. This contradiction has produced a number of uncertainties regarding its legal and political status, which varies between countries.²

Positing the place of ayahuasca and other similar substances within the wider framework of drug policy is not easy, largely due to what is called the “insufficient damage trap”³ in which psychedelics are caught, and by extension, would be applicable to psychoactive substances of plant origin such as ayahuasca, mescaline cactus or psilocybin mushrooms. These are too small a public phenomenon to pose a challenge to the international system for drug control. Ayahuasca is not always considered a legitimate issue in the discussion forums on drug policy reform,⁴ since the volume of consumption and its impacts on health and society are not perceived as sufficiently substantial for its legal status to be reconsidered.⁵

As a result, the challenge stems partially because ayahuasca is now used worldwide, but it is difficult to pigeonhole in the categories and conceptualisations traditionally used for “illegal drug abuse” for recreational purposes. These have determined the design of laws, the creation of policies and drug legislation application strategies. Since time immemorial certain indigenous groups have considered ayahuasca a sacred plant. It is a central part in many healing and community integration rituals, elements that do not fit into the framework in which current drug policy is defined, created and reproduced.⁶ But despite this, ayahuasca religions and new practices which include ayahuasca consumption oblige some countries to look for formulae that balance Western perceptions on drug consumption and new and constantly evolving ayahuasca use.⁷

What is ayahuasca and what are its effects?

Ayahuasca is the Quechua name that has traditionally been used by Amazon indigenous cultures for the decoction of the stem of the *Banisteriopsis caapi* vine. The decoction of this plant is the base to which each ethnic group, shamans and healers add other plants to which they attribute medicinal and/or psychoactive properties. All of the possible decoctions that use the base of the *B. caapi* are given the generic name of ayahuasca, a name which varies according to the culture. Among the Taitas of the Colombian Putumayo for example, the name is *yagé*, while among the Ecuadorian Shuar it is *natema*. Similarly, it has hundreds of different vernacular names.⁸ Nonetheless, among the infinity of possible combinations of plants that have this vine as a base, what has become popular in the West and what is typically known as ayahuasca is the addition of the leaves from the *Psychotria viridis* branch to *B. caapi*. This particular form of ayahuasca is used by various Brazilian ayahuasca religions in their places of origin; and the international expansion of practices of ayahuasca use that began precisely with these churches is probably the reason that the combination of *B. caapi* and *P. viridis* has become popular.

As mentioned, *P. viridis* contains the DMT alkaloid. On the other hand, *B. caapi* contains alkaloids belonging to the chemical family of betacarbolines, harmines, harmalines and tetrahydroharmines (known generically as harmalinic alkaloids). DMT is psychoactive when given intravenously or smoked in its freebase form, but not when taken orally, as it is broken down in the gastrointestinal tract by the monoamine oxidase (MAO) enzyme, which stops it reaching the brain. However, harmalinic alkaloids in particular inhibit the MAO; in other words, they block its action so that when DMT is ingested in combination with harmala alkaloids, DMT reaches the nervous system exercising psychoactive effects.

In studies conducted in natural settings and in laboratories, it has been proven that ayahuasca induces consistent changes in perception, emotion and interoceptive sensation (internal somatic sensations) and changes in the content as well as in the process of thought, to a lesser extent affecting individuals' capacities for interacting with their environment.⁹ From a phenomenological perspective, ayahuasca induces an altered state of consciousness that helps access different psychic content depending on the context where it is taken.¹⁰ Many people refer to this altered state of consciousness as therapeutic. In fact, no recreational use has yet to be documented. Users precisely describe their motives as therapeutic purposes, self-knowledge and personal growth. Ayahuasca has a long tradition of use in the treatment of drug dependency¹¹ and clinical trials are currently underway for the treatment of various psychological disorders, among these recurrent depression.¹²

Traditional plants, new uses

The first conceptual challenge for studying the expansion of ayahuasca use from the legal or policy perspective or that of psychoactive substances control is that it is difficult to place the uses of ayahuasca (and other traditionally-used plants such as *peyote* or *iboga*), in the classic dichotomy that distinguishes between medical and scientific and recreational uses. Ayahuasca and other plants challenge this dichotomy because of the distinctive contexts in which they are used: traditional, indigenous, religious, therapeutic and personal growth settings that are not precisely categorised as purely “medical” or “recreational”.

The first “non-indigenous people” to have contact with ayahuasca were the *Caboclos* (Brazilian *mestizos*), rubber workers in the jungle regions near indigenous communities who traditionally used ayahuasca. The first ayahuasca religions were thus born; worshippers began to join to such an extent that in under 90 years, ayahuasca moved from being a plant used exclusively by Amazon indigenous people to being present in many ‘non-native’ contexts. Globalisation and cultural exchange, far from what might be expected, has not brought about the trivialisation of ayahuasca use, but rather a rich and diverse mixture of rituals and ceremonies in which indigenous traditions are woven together with Western practices, maintaining the native essence with its potential for integrating a community. Ayahuasca ceremonies are conducted in a group under the supervision of a guide experienced in its use (shamans, healers, *vegetalistas*, psychotherapists, facilitators, etc.) and with a certain persistent Amazon world view. Hymns for example, sung by those who profess the Santo Daime religion, teem with images of jungle entities; shamans and healers who travel from the jungle to urban centres adapt their rituals to the context of the city, maintaining part of their traditional rites; and the psychotherapists and facilitators have generally learned to use ayahuasca in the Amazon jungle or have been taught by others who learned there.

To date, no recreational use of ayahuasca has been documented, in the sense that this is understood as a general substance use in recreational contexts. Undeniably, considering ayahuasca a drug since it contains DMT is inappropriate, since this is to separate the plant from the practices in which it is used: without ayahuasca there is no ceremony and without a ceremony, ayahuasca is not ingested. These are two inseparable aspects just as the ritual wine of the Eucharist would be in a Christian mass. Scientific studies have demonstrated that ayahuasca does not function neurobiologically like drugs that are abused, and people who take ayahuasca do not fit with the indicators used to determine patterns of problematic use of other substances.¹³

International legal Status: Ayahuasca and the United Nations drug control system

It is necessary to analyse the particular provisions in drug conventions that could affect the status of ayahuasca, and that of other traditionally-used plants, in order to understand the legal and political specificities at the international level. It is also important to examine the interpretations presented in the official commentaries on the Conventions and by academic experts on the issue, together with the position of the INCB.

Ayahuasca and traditional plants in international drug conventions

The 1961 Single Convention on Narcotic Drugs establishes a series of specific controls that the States Party must apply to the plants which are sources of narcotic drugs: the cannabis plant, the opium poppy and the coca bush. However, no other plant is subject to similar control mechanisms in the international drug conventions. No plant is subject to controls in the 1971 Convention on Psychotropic Substances, for example. However, this convention does control some of the active ingredients with hallucinogenic effects or stimulants contained in some vegetable species. This is the case, *inter alia*, of mescaline contained in peyote and the San Pedro cactus, of psilocybin and psilocin present in psilocybin mushrooms, cathonine, the agent primarily responsible for the stimulant effect of khat, of THC, a cannabinoid responsible for the psychoactive effect of cannabis, and DMT contained in *P. viridis*.

The majority of these substances are contained in Schedule I of the 1971 Convention, together with synthetic ones such as LSD or MDMA, reserved for the psychotropic substances considered a particularly serious threat to public health and with little or no therapeutic value. This is why they are subject to especially strict control measures, in compliance with Article 7, in addition to the general limitation, applicable to all the substances the schedules include, which restricts their production, distribution and use to strictly medical and scientific purposes. When the convention was negotiated, the active ingredients were included more due to the alarm caused by recreational use of the substances synthesised in laboratories than to the perception that traditional uses of ritual and religious consumption in non-Western contexts were a problem.¹⁴ However, traditional uses were subordinated to this objective, deemed more important, and were addressed as an exception, limited to certain groups and territories that needed to be protected as a cultural

expression and which were not at risk of being expanded and reinvented in other places.¹⁵

The traditional uses of psychoactive plants, understood as “residuals”, were thus subject to a series of conditions for Convention States Party. Those States that wanted to palliate the possible implications of these provisions could submit a reservation when signing the agreement, based on Article 32 (paragraph 4) which exempts parties from the obligations of Article 7 (which establishes special provisions applicable to the substances included in Schedule I, prohibiting their production, marketing and use, save for very limited medical and scientific purposes) governing those plants that grow wild in their territory, contain psychotropic substances and “are traditionally used by certain small, clearly determined groups in magical or religious rites”, with the exception of the provisions relating to international trade.

The 1971 Convention thus permits the use of substances controlled in their schedules, provided that these are implemented by geographically limited “traditional” groups, in ceremonies or rituals, and with the prior reservation made. In this sense, it is understood that all use beyond these conditions will not be considered permissible; and unlike the authorisation established for cannabis, poppy or the coca leaf in Article 49 of the Single Convention, the cultivation and traditional use of these plants has no deadline aimed to eliminate them definitively. For ayahuasca, this deadline for licit uses in a specific geographic location and for specific groups has important implications, since a substantial amount of ayahuasca used world-wide comes from and is prepared in a country in the Amazon basin (especially Brazil, Peru and Colombia), and in the case of churches such as Santo Daime and UDV, the practice of their belief includes the use of ayahuasca prepared ritually in Brazil, and hence it is indispensable to import the decoction.¹⁶

Several countries, including Mexico, Peru, the United States and Canada, submitted reservations for these traditional uses when they signed the Convention. On signing the treaty in 1975, Mexico submitted a reservation for indigenous groups in its territory who still made traditional use of plants that contain psychotropic substances included in Schedule I in their ritual practices. Peru did the same on signing in 1980, specifically mentioning ayahuasca, which contains DMT, and the San Pedro cactus, which contains mescaline. The United States submitted a reservation to Article 7 for the peyote cultivated, distributed and used by the Native American Church to continue to be part of its religious rituals. The reservation submitted by Canada was also for the use of peyote.¹⁷ Conversely, there were other countries

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which did not take advantage of the chance to submit reservations. Brazil was perhaps most conspicuously absent, as it is the cradle of ayahuasca religions and a country that has innumerable indigenous cultures in which the ritual taking of ayahuasca is a standard practice. However, it submitted no reservations to Article 32.4 when signing the 1971 Convention.¹⁸

On the other hand, the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances also contains provisions which can affect the status of traditional plants which contain psychotropic substances. Article 14, paragraph 2 establishes that the parties will take appropriate measures to prevent illicit cultivation of plants that contain narcotic or psychotropic substances, will respect fundamental human rights and take due account of traditional licit uses, where there is historic evidence of such use, and will protect the environment. Although the article was conceived for the cultivation of opium, coca and cannabis, it also affected other traditionally-used plants. In addition to the geographic and cultural limitation of the 1971 Convention, this provision requires “historical evidence” — though it does not clarify how the States Party should define the historical tradition of traditional uses, or how far this must date back in order to be considered traditional. By introducing the concept of “traditional licit uses”, it suggested that there are illicit traditional uses, but it did not clarify how the former differs from the latter. Lastly, the 1988 Convention is couched in terms of respect for human rights and the protection of the environment. Like the 1971 Convention, the 1988 Convention does not include the control of any plant.

The entire discourse of the Conventions is permeated with the conviction that Western pharmaceutical preparations are more efficient and safer than the traditional preparations obtained from plant species

Experts on the issue have pointed out the contradictions of this international regulation overall. First, the Conventions state that only traditional uses of plants where there is a long history may be permitted, which implicitly appears to suggest that historical practices are more authentic (and legitimate) than more recent ones. Second, the convention’s concept of culture is as a static and coherent package, associated with a specific territory, and assumes that traditional cultures will never be capable of extending their influence and scope to other populations and territories. These exceptions are permitted since they are not considered a threat to Western domination. Lastly, the entire discourse of the Conventions is permeated with the conviction that Western pharmaceutical preparations are more efficient and safer than the traditional preparations obtained from plant species. It does not even consider the implications that this could have to limit the use and knowledge of traditional indigenous medicine in populations that have access to limited resources for their physical and spiritual healing.¹⁹ Furthermore, even if they had these resources, this contention is

simply an ethnocentric attack on the cultural traditions which include the use of these plants, regardless of the time which has elapsed since they began.²⁰

It is clear that no plant as such, nor products obtained from plants in Schedule I of the 1971 Convention are controlled, it is only the active ingredients they contain, providing that the latter are extracted from the plants. The official Commentary on the Convention confirms this, and also adds that in its opinion, it is probable that these plants will never appear in their schedules.²¹ It is unclear if in order to continue permitting the traditional use of these psychoactive plants, the Convention States Party must or must not submit a reservation. The text of the treaty seems to suggest this. Yet, the commentaries introduce a paradox with regard to the statement in the convention itself that the “[...] continued toleration of the use of hallucinogenic substances which the 1971 Conference had in mind would not require a reservation under paragraph 4” of Article 32 given that, according to the traditional manner of addressing this question in the framework of international drug control, the commentators consider that “the inclusion in Schedule 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 its active principle”.²² Besides the difficulty, if not impossibility, of interpreting that sentence in pharmacological terms, what is the sense of anticipating this type of reservation? It is important to clarify this point given that the Convention text stipulates that the traditional use of these plants may only be condoned if a reservation was submitted when the State Party signed the Convention. This would only be possible in countries such as Mexico, Peru, the United States and Canada, which did so at the proper time. If, instead, we take the interpretation of the Commentary, any country can tolerate these traditional uses since a reservation should not be required to permit the use of substances that are not controlled, in accordance with the treaty.

Ayahuasca and INCB declarations

The position taken by the International Narcotics Control Board (INCB), far from providing clarity (one of the main tasks for which it was created), has only caused more confusion. The INCB shed some light on the issue in the 2010 and 2012 Annual Reports by confirming that in effect neither ayahuasca, nor any other plant that contains psychoactive ingredients which appears on the Schedule of the 1971 Convention, nor plant-based preparations, are subject to control. These declarations were essential for the defence of

A similar case: khat and the UN drug control system

Khat is a natural stimulant which has been compared with the coca leaf, coffee and amphetamine. Like ayahuasca, khat is not currently under any international control. The leaves are rolled into small balls which consumers put in their cheek, where they form a bolus (a soft leaf paste). The leaves stay on one side of the mouth and are chewed bit by bit. This practice is known as “khat chewing”. When all the juice from the leaves (and the psychoactive alkaloids they contain) has come out, the rest of the leaf is swallowed or spat out. As khat is astringent, it is usually consumed with chewing gum or a soft drink.

The League of Nations’ Advisory Committee on the traffic in opium and other dangerous narcotic drugs first studied the question of khat in 1933, and since then it has appeared several times on the international agenda. At the behest of the UN Commission on Narcotic Drugs (CND), in 1962 the WHO Expert Committee on Drug Dependence declared that the chemical and pharmacological active principles of khat needed to be identified before a solid medical opinion could be given regarding chronic consumption. A number of studies, including one conducted by the UN Narcotic Drug Laboratory, subsequently identified a series of phenylalkylamine alkaloids as the main psychoactive compounds of the khat plant: cathinone and cathine (norpseudoephedrine) and to a lesser extent, norephedrine.

Cathinone and cathine are alkaloids whose effects on the central nervous system are similar to those of amphetamine, although milder. In the early 1980s, all amphetamine-like substances were placed together on a list for international control, cathinone and cathine were added — following a recommendation issued in 1985 by the WHO Expert Committee (22nd Report, Technical Report Series 729) — to the list of controlled substances of the 1971 Convention on Psychotropic Substances (on Schedules I and III, respectively). Norephedrine was included later on the list of controlled precursors under the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, as it was frequently used for the illicit manufacture of amphetamine.

In 2002, the WHO Expert Committee carried out a prior examination of khat because there was enough information to justify a critical review and bring the plant itself under international control. However in 2006 the WHO concluded that it was not necessary to control khat. This conclusion blocked the possibility of khat being included in the UN control schedules, much to the frustration of the International Narcotics Control Board (INCB). The INCB had already begun to include khat in its Annual Reports, under the “Substances not under international control” section, and had asked the WHO to accelerate its review of the substance to determine whether to recommend it for international control. Despite the WHO recommendation, the INCB continued calling upon “the authorities to consider taking appropriate measures to control its cultivation, trade and use” (INCB Report for 2006, paragraph 556).

Although khat remains theoretically outside the UN drug treaty scheduling system, in practice it is in a grey area: it is controlled in some countries, but lawfully marketed in others. In the European Union, khat is on the list of controlled substances in 16 countries: Belgium, Denmark, Finland, France, Germany, Great Britain, Greece, Ireland, Italy, Latvia, Lithuania, Norway, the Netherlands, Poland, Slovenia, and Sweden.

individuals indicted in connection with ayahuasca in many parts of the world. However, these same clarifications went hand-in-hand with several statements whose objectivity is questionable, which were not contrasted and were based more on prejudice than on solid information and evidence.

In 2010 for example, the Board warned of the growing interest in the recreational use of these plants, which in its view were employed “outside their original socio-economic context to exploit drug addicts”,²³ who could be using the Internet to learn about their effects as well as to acquire the plants, taking advantage of the fact that they are not subject to international control. The INCB made these statements without providing any evidence on the scope or character of these uses outside the so-called “original contexts” and did not hesitate to recommend that governments “remain alert” to these “abuses” and consider controlling them at the national level.²⁴ In 2012, the Board again tackled the growing popularity of these plant substances in its Annual Report, which declares that they might be a “highly dangerous” practice which could lead to death. On this occasion, the Board referred to ayahuasca as one of the “new psychoactive substances obtained from natural products mostly sold in Europe” over the Internet and with the purpose of recreational use, a trend which in its judgment was encouraged by “the lack of clarity with regard to the control status of the plants at the national or international level”, and drug trafficking networks and retailers, “resulting in increased trade, use and the abuse of these plant materials in many countries”.²⁵

When the INCB reports refer to “purportedly... spiritual connotations”, or to “initiation journeys” “supervised” by shamans, they use ethnocentric language and a scornful tone

The use of ethnocentric language in this type of reports is significant for the perception of a new context for the use of traditional plants, when the INCB for example refers to “purportedly... spiritual connotations”, or to “spiritual tourism” and the “initiation journeys” “supervised” by shamans, which in their opinion, only serve to conceal the consumption of these substances (the quotation marks appear in the original text, reflecting the scornful tone employed).²⁶ Such disrespectful language, stemming from a profound ignorance of the situation of the majority of the centres that offer ayahuasca ceremonies, and the reasons that lead people to turn to them, is also used by other drug control agencies. The Spanish Clinical Commission of the National Drug Plan (PNSD), in its Report on Emerging Drugs, refers to people belonging to ayahuasca churches as “converts” (the word is in quotation marks, as if it were untrue) who practice “a religion and rites very far from their places of origin”,²⁷ and also states — like the INCB — that these are supervised by “self-proclaimed” shamans “although such events are usually totally outside the socio-cultural context that they claim to represent”.²⁸ Clearly, the approach

used for the legal and political treatment of these new uses, which is plagued by ignorance, mistrust and employs a scornful, even derisory tone — is not very different from that of the reports which led to the decision to subject the coca bush and leaf to control.²⁹ It is surprising that the two are divided by over sixty years.

But the implications of the INCB statements have an impact beyond rhetoric and are yet another example of how the Board oversteps its mandate. It should supervise compliance with drug control treaties and assist governments that struggle to fulfil these obligations,³⁰ but does not hesitate to take a particular interpretation of conventions and to understand the use of traditional plants.³¹ Some experts have noted that it is useful to highlight the inconsistencies in the legal treatment of the plants and their psychoactive alkaloids in the international control framework currently in effect, but the Board has again overstepped its responsibilities and issued a judgment with regard to the classification of the substances in the schedules of the Conventions. For the first time, this agency recommends that governments establish national controls on the plants without providing any scientific evidence of the scale and scope of this supposed increase in the use of substances such as ayahuasca and without mentioning their potential risks and benefits. And it does so without considering the differences between the large variety of plants mentioned, which have little in common with each other in their pharmacology, effects, cultural dimensions or the positions they hold in the cosmovision of traditional societies where they originated.³²

The INCB declarations of 2010 and 2012 assume that a number of questions are taken for granted, which is not necessarily so. First, the Board assumes that these new contexts of use exploit people who are dependent on other substances, apparently referring to controlled substances more generally taken in more developed capitalist societies, such as cocaine or heroin, in recreational contexts, as a result of vast and lucrative illegal markets. Second, the INCB considers that the use of ayahuasca and other non-controlled plant material, beyond their original geographic contexts —whether at ayahuasca churches, or in neo-shamanist or vegetarian rituals — is less authentic or less legitimate than traditional indigenous use; although according to specialists it is very difficult, if not impossible, to establish where these practices began.³³ Third, the Board appears to be convinced that the expansion of the use of ayahuasca has been fuelled by the lack of clarity in the law on the control of this type of plant material; while the benefits reported by those who participate in ceremonies that include ayahuasca consumption appear to play no role. The Board equates ayahuasca with what are called new psychoactive substances (NPS), as

if they were all identical, and includes it in the argument that explains the increase of this kind of substance use as just an attempt by people to find legal alternatives for “getting high”, and to avoid the problems with the authorities arising from the use of controlled substances.

The findings of scientific research conducted to date on the potential risks and benefits of the ritual use of ayahuasca differ from these statements. A variety of studies have demonstrated that regular ayahuasca users do not show up at all on the indicators of addiction or abuse used to evaluate problems from drug abuse. Ayahuasca users’ motives are far removed from simply trying to “get high” or search for new experiences. On the contrary, it has profound implications at personal, psychological, ethical and spiritual levels.³⁴ Studies to date have not identified neuropsychological deficits or psychopathological disturbances among ritual ayahuasca users and there are even some scientific studies that demonstrate an improvement among people who take ayahuasca, mostly because their addictive patterns of drug consumption stop, which perhaps is the subject of most research regarding the long-term benefits of ayahuasca use.³⁵ It seems that ayahuasca, far from being an abused drug, could be a tool for treating some of the consequences of a number of problem uses. Other studies have found a drop in minor psychopathological symptoms in people that start the use of ayahuasca and maintain it over time,³⁶ and decreased anxiety and the sense of despair.³⁷ There is currently at least one research centre (in Brazil) which is conducting clinical tests to assess the efficiency of ayahuasca in the treatment of severe depression and some anxiety disorders.

*The INCB’s
recommendations
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practices*

The INCB’s recommendations have important implications. Among the most serious are that they open the door to a dangerous possibility: the criminalisation of legitimate cultural practices, just because they take place outside their presumed “original socio-economic context”.³⁸ Criminalisation has in fact increased in the last ten years, in Spain for example, although it is difficult to attribute the increase in the number of people arrested for importing and using ayahuasca exclusively to the INCB’s statements in its reports.

According to the lawyers of the defence in Spain, with these reports the INCB sent two fundamental messages. The first is that ayahuasca and other plants or plant-based preparations with psychoactive properties are not controlled in accordance with international drug conventions. These declarations are felt to shed some light on the legal status of these plants. Second, the Board invited governments to be “alert” to the expansion of their uses beyond the presumed original and legitimate contexts. The problem is that the States Party only took

note of the second part of the message: to be more alert, and as a result, make more arrests (in Spain, for example, there were at least 37 ayahuasca-related arrests made between January 2011 and March 2013). Many of these reach the courts. But the States ignored the statement that these plants are legal in accordance with international drug standards, and indicted detainees as if this were a public health crime associated with illegal substances.³⁹

In the light of this review of how international law treats the use of traditional plants, it is clear that the plant materials and plant-based preparations considered here are outside the sphere of control of the international drug treaties. However, it is very common to find that documents, declarations or judicial rulings consider not ayahuasca itself but the DMT it contains to be a banned substance, and as such its use and importation should be prosecuted. The ambivalent international legal situation is further complicated by the differences between countries' domestic policies and legislation on ayahuasca.

National legal status

At the national level, ayahuasca use is given different legal treatment depending on the jurisdiction, and whether it takes place in a religious context, a traditional or indigenous ritual, or adopts the form of new types of consumption associated with alternative therapies, personal growth or particular uses. In most jurisdictions where the legal and political status of ayahuasca is better defined, and in places where it has become a criminal justice issue, it is noticeable that the rights of ayahuasca users, such as religious freedom, are rarely recognised through pro-active government public policies, but are the result of a degree of participatory social processes. Their status has been determined *a posteriori* through legal acquittals and the arguments used to sustain these conclusions. These are the results of legal decisions which have been thoroughly studied by those who rallied to defend the cases.⁴⁰ Much of this progress is due to cases concerning ayahuasca churches, especially the UDV and Santo Daime, which have led to the churches being acknowledged as legitimate religious organisations, authorised to import ayahuasca for their rituals. These cases have achieved greater legal security for religious uses alone, and on occasions, only for a particular ayahuasca church and not for all churches, but this has undoubtedly been a fundamental step towards the legitimatisation of other uses of ayahuasca.

Although nations differ greatly in the legal status they grant to ayahuasca, they can be grouped into three general types: 1) countries

in which there is a legal void regarding ayahuasca, in which some court sentences show that judges and governments have taken up a position; 2) countries where it is specifically prohibited; and 3) countries that permit and sometimes even regulate particular uses, leaving others illegal.

The first is composed of countries where there is a legal void regarding ayahuasca use. Most countries are found in this group. Ayahuasca is not an important issue in public drug policies, or in cultural or religious contexts. In most areas of jurisdiction, governments have not taken a position on the issue, and there have been no decoction-related legal cases, and ayahuasca has not been a subject of political and social debate. Nevertheless, this group includes those countries where although the government has not taken up a position on it, there have been notable court cases that suggest that ayahuasca may soon become a public policy issue, or even that a certain position is emerging, as in Chile and Spain.

In 2013, a Spanish court decided that there was no scientific evidence for the argument that ayahuasca is a harmful substance for health, and hence a threat to public health and a crime

The highest number of arrests related to ayahuasca in recent years has been made in Spain, and many of these have gone to trial. The wave of arrests intensified in 2010 with at least 38 arrests made by mid-2015. Although this could be attributed to the alarm caused by the 2010 INCB Annual Report, it is not easy to identify the causes. On the one hand, increased use could explain the rise in cases in Spain. On the other, this increase in ayahuasca seizures coincided with the installation of a scanner that analyses fluids at Madrid airport, part of a process of implementing more sophisticated airport and border safety measures.⁴¹ As a result, ayahuasca posted from countries such as Peru, Brazil and Colombia is also intercepted.

The arrests follow a similar pattern, which is repeated in other European countries: people order ayahuasca by post, and when they receive the package at their home and signing for it, they are arrested by undercover police officers disguised as postmen. Many detainees who had purchased a small amount over Internet were unaware that they were breaking the law. Some of these cases were shelved before reaching the courts, and those that did go to court, with one exception,⁴² have resulted in acquittals. This is largely because the purchase and possession of controlled substances intended for personal use is not criminalised in Spanish law, and it was sufficient to demonstrate that the ayahuasca was intended for personal use. In other cases, the sentences went still further and recognised that, in line with INCB affirmations,⁴³ ayahuasca is not illegal in Spain.⁴⁴ In 2013, one judge even decided that there was no scientific evidence for the argument that ayahuasca is a harmful substance for health, and hence a threat to public health and a crime.⁴⁵ The trend towards

favourable decisions was partly due to the work of the defence lawyers and civil society organisations such as *Plantaforma para la Defensa de la Ayahuasca* [Platform for the Defence of Ayahuasca] and the *Fundación ICEERS* [ICEERS Foundation], which were hired throughout to spread the idea that ayahuasca is not illegal, as claimed by the INCB in its 2010 Report, among judges, public servants and customs officers, and among the staff at the Spanish National Institute for Toxicology which is responsible for conducting toxicological analyses for the trials.⁴⁶ In Spain however, the large number of acquittals have not led to public recognition of the rights of ayahuasca users or to a public policy for regulating its use.

In Chile, the 2012 acquittal in the *Manto Wasi* case dismissed the drug-trafficking charge brought against two people. In addition, the court recognised that ayahuasca had positive effects on participants in sessions. Many of these testified at the trial, which gave legitimacy to the therapeutic use of ayahuasca, and acknowledged it as licit.⁴⁷ However, shortly afterwards, following the press coverage of a series of ayahuasca-related events which alarmed the public,⁴⁸ the Chilean Institute of Public Health announced that it was drafting a Bill to prohibit the use of ayahuasca. The Bill did not prosper, in part due to the work of activists and the lawyer of the *Manto Wasi* case. The issue seems to have been dropped from the government agenda.⁴⁹

Chile was on the brink of moving into the second category, composed of those countries which either specifically ban ayahuasca in all cases, placing it on a list of prohibited substances (as France does); or only in certain circumstances, generally those considered illegal in national legislation. In 2005, France became the only country to have a specific ban on ayahuasca. The decision was made shortly after the decision in the Santo Daime court case in 2005, which ruled in favour of the church but alarmed the authorities. The French government decided to include in the list of prohibited substances not only ayahuasca but all the main ingredients it could contain. DMT was already controlled, as it is in all countries that have ratified the 1971 Convention.⁵⁰ All uses of ayahuasca are therefore prosecuted in the country and they also suffer the stigma of appearing to be related to cults.⁵¹

The third and last group covers areas where certain uses are permitted, and even regulated, because of a government initiative, recognition following court rulings, or because of certain exceptions applied to other controlled substances. Religious uses for example are permitted and regulated in Brazil, the Netherlands, Canada and the United States, and traditional use in Peru and Colombia. However, when governments permit particular uses, others remain on the legal border-line. This is the case of uses that seek personal

development and growth, which are increasingly frequent and widespread and which take place in guided sessions.

Peru is the only country that has recognised the traditional uses of ayahuasca as national cultural heritage, and it is the only country which, on signing the 1971 Convention, made a specific reservation for ayahuasca. In 2008, the Peruvian Ministry of Culture declared the knowledge and traditional uses of ayahuasca practiced by the Amazon native communities to be national cultural heritage, with the aim of protecting “the traditional use and the sacred character of the ayahuasca ritual, distinguishing it from de-contextualised Western, consumer uses and commercial purposes”.⁵² This suggests that although no explicit legal regulation has been created, tradition regulates the use of ayahuasca in the country in the form of a series of uses and customs practiced with informal and traditional mechanisms of social control in indigenous settings,⁵³ which can be practiced with the protection of the authorities and the law, although there has never been a specific law to regulate non-traditional uses. Colombia has no specific regulation for ayahuasca, although its traditional use is indirectly protected by the legislation for indigenous people.⁵⁴ This “protection without regulation” however has had unforeseen consequences, since the lack of specific control has led to the multiplication of treatment centres, many of them dubious, particularly in Peru.

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Again, the use and importation of ayahuasca for religious purposes is permitted and regulated in the United States, Canada and the Netherlands and also in Brazil, although the Brazilian regulation is different and will be discussed below.

In 2006, following a favourable ruling from the Supreme Court, the United States branch of UDV was authorised to import ayahuasca for religious uses into the United States,⁵⁵ in terms similar to those for the Native American Church for the religious use of peyote. The Supreme Court ruled that the government could not ban this church’s ayahuasca rituals without having previously demonstrated the health risks that these entail. Religious freedom took precedence over national drug control law. Soon after, following a favourable ruling in the state of Oregon in 2009, the branch of Santo Daime, the Church of the Holy Light of the Queen (CHLQ) also received this authorisation.⁵⁶ Since then, both churches have obtained licenses from the Drug Enforcement Agency (DEA) to import, store and distribute ayahuasca.⁵⁷ In Canada in 2006, Santo Daime received government permission to use ayahuasca in its rituals, through being granted an exemption by the Ministry of Health in accordance with Section 56 of the Drugs and Controlled Substance Act, after its

leaders had spent several years in legal battles to import ayahuasca.⁵⁸ Canada opted to focus on the religious use of ayahuasca as a question of public policy, dropping charges against Santo Daime members and removing the issue from the courts so that the Ministry of Health could address it. Canada and Brazil are the only countries which have focused more on policy than law enforcement.⁵⁹ However, neither the United States nor Canada permits non-religious use of ayahuasca, like the Netherlands. There, ayahuasca can be used and imported for religious purposes and the practice is regulated in the terms of the right to freedom of conscience and religion, since the Supreme Court authorised Santo Daime to use ayahuasca in its rituals as a fundamental element of this religion.⁶⁰

Brazil has the most developed regulation of the use of ayahuasca, given the number of important groups consulted as for the wide range of aspects considered. Brazil did not submit a reservation regarding ayahuasca when it signed the 1971 Convention, not even under Article 32. However, during the 1980s, the Brazilian government launched a consultation period with the ayahuasca religious communities to research the religious use of ayahuasca and the way to manage the practices of these expanding groups.⁶¹ Its aim was to pave the way for government recognition of the practices of these religions and also to establish a series of regulatory parameters.⁶² Brazil permits the religious and ritual use of ayahuasca, and since 2010 this has been regulated by Resolution number 01/2010 of the National Council for Drug Policy (CONAD). This contains a series of standards, ethical principles and prohibitions that must be respected and covers a wide range of the aspects of ayahuasca use, including transport and storage, research for potential therapeutic uses, and more controversial issues such as distribution for commercial purposes, tourism and publicity.⁶³ The Brazilian government has opted for proactive, progressive and human rights-based action to move towards the regulation of ayahuasca. However, although Brazil has made progress in protecting ayahuasca use within its borders, it has not made an international appeal for these traditions or against the persecution of ayahuasca churches, which are of Brazilian origin.⁶⁴

Final remarks

This overview of the history of the use of ayahuasca, the scientific knowledge about it and the political and legal treatment it has received clarifies several issues, but it might raise more questions than it answers. It seems clear that traditional plants are not controlled by international drug conventions. However, it is frequently stated that although ayahuasca is not a banned substance, the DMT which it contains is prohibited, and so the consumption and importation of ayahuasca should be prosecuted. The issue becomes more complex when combined with the diversity of national laws and policies. The ambivalence of the law raises many questions. If the decoction of ayahuasca is not controlled, is the DMT that it contains controlled? This same question can be asked of peyote and psilocybin mushrooms. Expert lawyers and activists contend that if the whole is not controlled, then its parts cannot be controlled either, because they make up the whole. Mescaline for example is a substance controlled under Schedule I of the 1971 Convention, but it would only be illegal if it were naturally or chemically extracted from the cactus. By the same token, the DMT contained in ayahuasca cannot be considered a controlled substance when it is in the ayahuasca drink.⁶⁵

Promoting the scientific knowledge of ayahuasca in particular, and of psychoactive plants of traditional use in general, does not contradict the spirit of the Conventions

What certainly is clear is that the trend that considers ayahuasca a controlled substance solely because it contains DMT needs to be reverted, and the fact that traditional psychoactive plants are not illegal needs to be highlighted. These plants are not controlled, but they are generally believed to be illegal. This could lead to a scenario in which governments criminalise them, following the INCB recommendations, and the public would be unaware of the change because they already believe that these plants are controlled. In view of this, it is important to offer guidance to drug policy reform advocates, particularly in the run-up to the 2016 United National General Assembly Special Session (UNGASS) on the global drug problem.

Reducing a complex cultural practice, such as the ritual use of ayahuasca, to a single part of the whole (the DMT contained in the drink) is both extremely reductionist and misinformed. The ethnocentrism, fanaticism and narrow-mindedness of the INCB is evident not only from the recommendations in its 2010 and 2012 reports, but also from what it fails to state or recommend. Rather than encouraging governments to include ethno-botanic materials in the same categories as other substances classified as “dangerous drugs”, and which can therefore be controlled, it could have shown

real cultural empathy. It could have recommended that countries promote research on the effects of the plants before adopting control strategies; call on the World Health Organization to take a stand on the issue;⁶⁶ or foster a cultural framework to manage the challenges associated with this practice, a task that could be entrusted to UNESCO. This would have made sense, first because of the spiritual tradition of the use of these plants, and second because of the accumulated scientific evidence on its potential benefits. But to ask this of an agency like the INCB would seem to be asking too much.

The spirit of the Conventions, expressed in the preamble to the 1961 and 1971 treaties, is “to safeguard the health and welfare of mankind”. Experts know that if there is one thing ayahuasca does it is precisely that it acts on people’s value structures. The few scientific studies that have been published on the effects of ayahuasca have also demonstrated this. Again, promoting the scientific knowledge of ayahuasca in particular, and of psychoactive plants of traditional use in general, far from contradicting the spirit of the Conventions, might even reinforce it.

The countries where ayahuasca has been used from time immemorial (Brazil, Colombia and Peru) could also help towards international recognition of these practices, and publicise the fact that ayahuasca is not an illegal substance according to international drug treaties. Such action would undoubtedly help halt the wave of arrests, grant more legal certainty to the people who use and work with ayahuasca, and encourage scientific research, in order to draw the greatest possible benefits from ayahuasca for the wellbeing of humankind and create closer links and understanding among the peoples of the world.

Endnotes

1. INCB (2010) *Report of the International Narcotics Control Board for 2010*, Paragraph 284 http://www.incb.org/documents/Publications/AnnualReports/AR2010/AR_2010_English.pdf and INCB (2012) *Report of the International Narcotics Control Board for 2012*, Paragraphs 328–334 http://www.incb.org/documents/Publications/AnnualReports/AR2012/AR_2012_E.pdf.
2. This ambiguity led to a group of well-known experts in 2012 to publish ‘Statement on ayahuasca’, mainly centred on the challenges associated with the religious use of the drink. Anderson, B. T., Labate, B. C., Meyer, M., Tupper, K. W., Barbosa, P. C. R., Grob, C. S., et al. (2012). ‘Statement on ayahuasca’, *International Journal of Drug Policy*, vol. 23, number 3, pp. 173–175.
3. Feilding, A. (2014) ‘Cannabis and the Psychedelics: Reviewing the UN Drug Conventions’, in Labate, B. C. and C. Cavnar, *Prohibition, Religious Freedom, and Human Rights: Regulating Traditional Drug Use*, Berlin/Heidelberg: Springer-Verlag, pp. 189–210, pp. 195–196. The author identifies the cause of this “trap” in the fact that psychedelics do not generate addiction, for which there is no associated crime due to dependency on them; these do not have acute toxicity like alcohol, cocaine or heroin, for example, which frequently causes death due to overdose; neither do they have chronic toxic effects with long-term use as do tobacco or alcohol. Therefore, it can be stated that psychedelics have a “low risk of problematic consumption”, which partially explains that they are not a central issue in the debates on public policy on drug issues.
4. Bia Labate developed this idea in her talk as part of the Roundtable on Law, Politics and Human Rights at the *World Ayahuasca Conference* (AYA2014), 25–27 September 2014, Ibiza, Spain, organised by Fundación ICEERS. Available at: <https://www.youtube.com/watch?v=Czw9cYzfjGI&list=PLFSYWkL573y56xvYDMPLaF8d-EIBJevL&index=51>
5. Feilding, A. (2014). ‘Cannabis and the Psychedelics: Reviewing the UN Drug Conventions’. Op. cit., pp. 195–196.
6. Kenneth W. Tupper, K. W. (2008) ‘The globalization of ayahuasca: Harm reduction or benefit maximization?’, *International Journal of Drug Policy*, vol. 19, number 4, pp. 297–303.
7. Labate, B. C. and Feeney, K. (2012) ‘Ayahuasca and the process of regulation in Brazil and internationally: Implications and challenges’, *International Journal of Drug Policy*, vol. 23 number 2, pp. 54–161.
8. Luna, L.E. (1986b) ‘Apéndices’. *América Indígena*, vol. 46 number 1, pp. 247–251.
9. Bouso, J.C. and Riba, J. (2011) ‘An overview of the literature on the pharmacology and neuropsychiatric long term effects of ayahuasca’, in Guimaraes, R. (ed.) *The Ethnopharmacology of Ayahuasca*, pp. 55–64 http://trnres.com/ebook/uploads/contentrafael/T_14049712683%20Rafael.pdf
10. For an exhaustive phenomenological description of the effects of ayahuasca, see Shanon, B. (2002) *The Antipodes of the Mind: Charting the Phenomenology of the Ayahuasca Experience*. Oxford University Press.
11. Bouso, J. C. and Riba, J. (2014) ‘Ayahuasca and the Treatment of Drug Addiction’, in Labate, B. and Cavnar, C. (eds.) *The Therapeutic Use of Ayahuasca*, Berlin: Springer, pp. 95–109.
12. Osório, F. L., Sanches R. F., Macedo L. R., dos Santos R. G., Maia-de-Oliveira, J. P., Wichert-Ana, L. et al. (2015) ‘Antidepressant effects of a single dose of ayahuasca in patients with recurrent depression: A preliminary report’, *Revista Brasileira de Psiquiatria*, vol. 37, number 1, pp. 13–20.
13. Fábregas, J.M., González, D., Fondevila, S., Cutchet M., Fernández, X., Barbosa, P. C. et al. (2010) ‘Assessment of addiction severity among ritual users of ayahuasca’, *Drug and Alcohol Dependence*, vol. 111, number 3, pp. 257–261.
14. For further details on the arguments given by countries at the time of negotiations of Convention of 1971, see Bewley-Taylor, D., and M. Jelsma (2012) “Regime change: Re-visiting the 1961 Single Convention on Narcotic Drugs” *International Journal on Drug Policy*, vol. 23, number 1, pp. 72–81, pp. 79.
15. Feeney, K. and B. C. Labate (2014) ‘The Expansion of Brazilian Ayahuasca Religions: Law, Culture and Locality’, in Labate, B. C. y C. Cavnar, *Prohibition, Religious Freedom, and Human Rights: Regulating Traditional Drug Use*. Berlin/Heidelberg: Springer-Verlag, pp. 111–130.
16. Ibid. p. 119. A significant part of ayahuasca-related arrests in the world have occurred due to the importation of the drink from the Amazon. In many legal cases (such as that of Santo Daime in the Netherlands), the people indicted have alleged the inevitability of importation for practising their creed. See van den Plas, A. (2011) ‘Ayahuasca under international law: the Santo Daime Church in the Netherlands’, in Labate, B. C., & Jungaberle, H. (eds.) *The internationalization of ayahuasca*. Zürich: Lit Verlag, pp. 327–338.
17. The reservation submitted by Canada is especially relevant in this context since it was done under Article 32.3, instead of 32.4. Canada took this course because it wanted to have authorisation to legally import peyote, given that it is a cactus that does not grow in its territory but Canada has groups that make ritual and religious use of it. See the complete text of the reservation in *United Nations Treaty Collection*, Status of the 1971 Convention: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-16&chapter=6&lang=en
18. Ibid.
19. Feeney, K. and B. C. Labate (2014) Op. cit. pp. 111–130. In this chapter, the authors conduct an exhaustive analysis of the provisions of the three treaties that could affect the traditional use of psychoactive plants and their legal, social and cultural implications.
20. Some of the ethnographic research situates no more than 50 years of use of ayahuasca by certain traditional Amazon ethnic groups. For example, Brabec de Mori, B. (2011) ‘Racing hallucinations: Contributing to a critical ethnohistory of ayahuasca use in the Peruvian Amazon’, in Labate, B. C. and Jungaberle, H. *The internationalization of ayahuasca*. Zürich: LitVerlag. It has to be asked whether the concept of “traditional use” is applied to these ethnic groups legitimating their ayahuasca-related practices.
21. United Nations (1977) *Commentary on the Convention on Psychotropic Substances, done at Vienna on 21 February 1971* (E/CN.7/589) New York: United Nations. https://www.unodc.org/documents/treaties/organized_crime/Drug%20Convention/Commentary_on_the_Convention_1971.pdf See in, particular, commentaries to Article 32, paragraph 5.

22. United Nations (1977) *Commentary on the Convention on Psychotropic Substances, done at Vienna on 21 February 1971*. See in, particular, commentaries to Article 32, paragraph 12. According to this paragraph: "Neither the crown (fruit, mescal button) of the Peyote cactus nor the roots of the plant Mimosa hostels nor Psilocybin mushrooms themselves are included in Schedule I, but only their respective active principles, mescaline, DMT and psilocybin (psilocin, psilocin)". The official commentaries to the international conventions on drugs are the reference tool for interpreting their most controversial provisions. These are available for consultation at: <https://www.unodc.org/unodc/en/treaties/index.html?ref=menu>
23. The INCB might be referring here to the Amazon centres in which drug addicts are treated with ayahuasca, or perhaps the treatment centres with the *Tabernantheiboga* plant or its main alkaloid, ibogaine, a substance which is not included in the Schedules.
24. INCB (2010) *Report of the International Narcotics Control Board for 2010*, Paragraphs 285 (p. 46) Literally, the INCB is referring to "khat (*Catha edulis*), whose active ingredients cathinone and cathine are listed in Schedules I and III of the 1971 Convention; ayahuasca, a preparation made from plants indigenous to the Amazon basin of South America, mainly a jungle vine (*Banisteriopsis caapi*) and another tryptamine-rich plant (*Psychotria viridis*) containing a number of psychoactive alkaloids, including DMT; the peyote cactus (*Lophophora williamsii*), containing mescaline; magic mushrooms (*Psilocybe*), which contain psilocybin and psilocin; Ephedra, containing ephedrine; 'kratom' (*Mitragyna speciosa*), a plant indigenous to South-East Asia that contains mitragynine; iboga (*Tabernanthe iboga*), a plant that contains the hallucinogen ibogaine and is native to western Central Africa; varieties of *Datura* containing hyoscyamine (atropine) and scopolamine; and *Salvia divinorum*, a plant originating in Mexico that contains the hallucinogen salvinorin A". http://www.incb.org/documents/Publications/AnnualReports/AR2010/AR_2010_English.pdf
25. INCB (2012) *Report of the International Narcotics Control Board for 2012*, Paragraphs 329-330 (p. 46) http://www.incb.org/documents/Publications/AnnualReports/AR2012/AR_2012_E.pdf
26. The quotation marks in the latter three concepts are used in the Report; the authors' emphasis is in italics. INCB (2012) *Report of the International Narcotics Control Board for 2012*, Paragraphs 329-330 (p. 51).
27. Plan Nacional sobre Drogas (2011) *Informe drogas emergentes* [Report on Emerging Drugs]. Madrid: PNSD, p. 14 <http://www.pnsd.msssi.gob.es/profesionales/publicaciones/catalogo/bibliotecaDigital/publicaciones/pdf/InformeDrogasEmergentes.pdf>
28. INCB (2012) *Report of the International Narcotics Control Board for 2012*, Paragraphs 329-330 (p. 51).
29. See the UN Social and Economic Council (1950) *Report on the Commission of the Enquiry of Coca Leaves*, Official Records. Fifth year, Twelfth Session. <http://www.druglawreform.info/images/stories/documents/coca-inquiry-1950s.pdf>. This report contains countless sentences based on the prejudice and scorn of its authors regarding the indigenous populations of the Andes and non-Western customs.
30. According to its own web page, with regard to protection, trafficking and *illicit* drug use, the Board "identifies weaknesses in national and international control systems and contributes to correcting such situations". See the following link: <http://www.incb.org/incb/en/about/mandate-functions.html>
31. Jelsma, M. (2011) 'Mixed thoughts about the INCB's latest report', TNI blog. <https://www.tni.org/es/node/12371> and International Drug Policy Consortium (2011) 'IDPC response to the 2010 Annual Report of the International Narcotics Control Board', London: IDPC.
32. Tupper, K. W. y B. C. Labate (2012) 'Plants, psychoactive substances and the INCB: The control of nature and the nature of control', *Human Rights and Drugs*, vol. 2, number 1, pp. 17-28.
33. *Ibid.*, p. 26.
34. Bouso, J.C., González, D., Fondevila, S., Cutchet, M., Fernández, X., Ribeiro Barbosa, P.C. *et al.* (2012) 'Personality, psychopathology, life attitudes and neuropsychological performance among ritual users of Ayahuasca: A longitudinal study', *PLoS One*, vol. 7, number 8: e42421 <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0042421>
35. Barbosa, P.C., Mizumoto, S., Bogenschutz, M.P., Strassman, R.J. (2012) 'Health status of ayahuasca users', *Drug Testing and Analysis*, vol. 4, number 7-8, pp. 601-609.
36. Barbosa, P.C., Cazorla, I.M., Giglio, J.S., Strassman, R. (2009) 'A six-month prospective evaluation of personality traits, psychiatric symptoms and quality of life in ayahuasca-naïve subjects', *Journal of Psychoactive Drugs*, vol. 41, number 3, pp. 205-212.
37. Santos, R.G., Landeira-Fernandez, J., Strassman, R.J., Motta, V., Cruz, A.P. (2007) 'Effects of ayahuasca on psychometric measures of anxiety, panic-like and hopelessness in Santo Daime members', *Journal of Ethnopharmacology*, vol. 112, núm. 3, pp. 507-513.
38. *Ibid.*, p. 27. In this point, the issue of "historical evidence", a requirement identified in Article 14.2 of the Convention of 1988, for traditional use to be permitted and considered licit, again emerges. But it does not specify how much time must have elapsed. This grants an ambiguous legal status that has been examined by some specialists. For example, in the case of peyote, the ceremonial use goes back more than 5000 years (Bruhn, J.G., De Smet, P.A., El-Seedi, H.R., Beck, O. (2002) 'Mescaline use for 5700 years', *Lancet*, 359 (9320): 1866), while the religious use on the part of the Native American Church started in the 19th century and the ayahuasca churches emerged in the 1930s and 1940s. A review of the historic evidence of ayahuasca use can be found, among others, in Feeney, K. and B. C. Labate (2014) *Op. cit.*, pp. 116-118.
39. This argument was developed by the Spanish lawyer Diego de las Casas in the roundtable on Law, Politics and Human Rights at the World Ayahuasca Conference (AYA2014) 25-27 September 2014, Ibiza, Spain, organised by the Fundación ICEERS. Available at: <https://www.youtube.com/watch?v=Czw9cYzfjGI&list=PLFSYWkLS73y56xvYDMPLaf8d-EIBjeVL&index=51>
40. Tupper, K. W. and B. C. Labate (2012) *Op. cit.*, p. 27.
41. According to the sources used by Fundación ICEERS.
42. Audiencia Provincial de Castellón [Provincial Court of Castellón] (2015) First section, sentence number 264. The only guilty verdict for an ayahuasca-related case in Spain was not following a trial but after an agreement between the defence and the public prosecutor which agreed to reduce the sentence, which eventually was reduced to the minimum for these cases established by the Penal Code - 18 months.
43. In addition to the Annual Reports, see INCB (2010) Official Letter sent to ICEERS on 1 June, 2014, Ref. INCB-PSY 151/10,

http://iceers.org/Documents_ICEERS_site/Letters/INCB/INCB_Response_Inquiry_ICEERS_Ayahuasca_2010.pdf

44. For more details on the legal cases in Spain and other countries, see De Loenen, B., O. Parés and C. Sánchez (in print, 2016) 'A Climate for Change: ICEERS and the Challenges of the Globalization of Ayahuasca', in Labate, B.C. Cavnar, C. & Gearin, Alex (eds.) *The World Ayahuasca Diaspora: Reinventions and Controversies*. Farnham, UK: Ashgate.

45. Audiencia Provincial de Barcelona [Provincial Court of Barcelona] (2013) Seventh section, sentence number 558/2013.

46. See Plantaforma para la Defensa de la Ayahuasca <http://www.plantaforma.org> and Fundación ICEERS <http://www.iceers.org>

47. Cuarto Tribunal de Juicio Oral en Lo Penal de Santiago de Chile [Fourth Penal Court for Oral Hearings in Santiago, Chile] (2012). Case RIT N° 229 – 2011.

48. BBC News. (26 April 2013). 'Chile newborn 'dies in sect ritual' <http://www.bbc.com/news/world-latin-america-22304694>

49. More details are available in De Loenen, B., O. Parés and C. Sánchez (in print, 2016) 'A Climate for Change: ICEERS and the Challenges of the Globalization of Ayahuasca', in Labate, B.C. Cavnar, C. & Gearin, Alex (eds.) *The World Ayahuasca Diaspora: Reinventions and Controversies*. Farnham, UK: Ashgate.

50. Decree of 20 April 2005, that modifies Decree of 22 February 1990 that establishes the list of controlled substances as narcotic drugs http://bdoc.ofdt.fr/doc_num.php?explnum_id=4935. This Decree added to Annex IV of the Decree of 1990 the following substances: Banisteriopsis caapi, Peganum harmala, Psychotria viridis, Diplopterys cabrerana, Mimosa hostilis, Banisteriopsis rusbyana, harmine, harmaline, tetrahydroharmine (THH), harmol.

51. Plantaforma (2014) *Estudio Documental. La ayahuasca en España. Informe jurídico y científico* [Bibliographic Study. Ayahuasca in Spain. Legal and Scientific Report], p. 26 http://www.plantaforma.org/wp/wp-content/uploads/PDA_INFORME_FINAL_2014.pdf; Feeney, K. and B. C. Labate (2014) Op. cit., p. 121; Bourgoigne, G. (2011) 'One hundred days of ayahuasca in France: The story of a legal decision', in Labate, B. C. and H. Jungaberle (eds.) *The internationalization of ayahuasca*, pp. 353–364.

52. *Declaración Patrimonio Cultural de la nación a los conocimientos y usos tradicionales del Ayahuasca practicados por comunidades nativas amazónicas* [Declaration of Cultural Heritage of the nation for the knowledge and traditional uses of Ayahuasca practiced by Amazon native communities], National Directorate Resolution number 836/INC. Lima, 24 June 2008. Available at: <http://www.bialabate.net/news/peru-declara-la-ayahuasca-patrimonio-cultural>.

53. Talk by Bia Labate in the Roundtable on Law, Politics and Human Rights at the World Ayahuasca Conference (AYA2014) <https://www.youtube.com/watch?v=Czw9cYzfjGI&list=PLFSYWkLS73y56xvYDMPLaf8d-EIBjeVL&index=51>

54. Rodríguez, L. (2012) 'Situación Jurídica de la ayahuasca (Yagé) en Colombia: Reflexión a partir de tres fuentes primarias' [Legal situation of ayahuasca (yagé) in Colombia: Reflection based on three primary sources], Bia Labate News blog <http://www.bialabate.net/news/situacion-juridica-de-la-ayahuasca-yage-en-colombia>

55. Supreme Court of the United States (2006) *Gonzales, Attorney General, et al. v. O Centro Espirita Beneficente Uniao do Vegetal et al*, number 04-1084 <https://www.law.cornell.edu/supct/html/04-1084.ZO.html>

56. Oregon District Court (2009) *Church of the Holy Light of the Queen, et al., Plaintiffs v. Michael B. Mukasey, et al., Defendants*, number CV 08-3095-PA <http://www.bialabate.net/wp-content/uploads/2009/04/85-121908-order-denying-motion-to-dismiss.pdf>

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65. This is the position defended by Diego de las Casas and as such was presented at the World Ayahuasca Conference (AYA2014), ideas that are also compiled in Plantaforma (2014) Op. cit.

66. The WHO has been asked about the issue. More details about this process are available in Kaplan, Ch. (2011) 'Foreword: Ayahuasca and the coming transformation of the international drug control system', in Labate, B. C. and Jungaberle, H. (eds.) Op. cit., pp. 15–19.

The authors of this report are researchers at the International Center for Ethnobotanical Education, Research & Service (ICEERS). **Constanza Sánchez** is a political scientist and holds a PhD in International Relations and International Law. **José Carlos Bouso** is a clinical psychologist and has a PhD in Pharmacology.

CONTRIBUTORS

AUTHORS: Constanza Sánchez y José Carlos Bouso

EDITORS: Pien Metaal and Martin Jelsma

TRANSLATION INTO ENGLISH: Rosemary Underhay

COPY EDITOR: Beatriz Martínez

COVER IMAGE: Carlos Suárez

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