



A new Information Network for Andean Independence

## **Obama's Bolivia ATPDEA Decision Blast from the Past or Wave of the Future?**

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At April's Summit of the Americas in Trinidad and Tobago, President Barack Obama and Secretary of State Hillary Clinton made clear their intention to repair frayed U.S. relations with Latin America. In May, building on momentum from the Summit, the U.S. and Bolivian governments initiated a high-level dialogue in La Paz aimed at establishing the framework for a mutually respectful relationship. But President Obama clouded the hopeful outlook at the end of June when he opted to maintain Bolivia's suspension from Andean Trade Promotion and Drug Eradication Act (ATPDEA) trade benefits – a suspension initiated in 2008 by President Bush, on the false grounds that Bolivia was shirking its international drug control obligations.<sup>1</sup>

In contrast to the goodwill generated by Obama and Clinton during and after the Summit, the ATPDEA decision came as an unwelcome blast from the past. With the high-level dialogue underway, Bolivia had expected Obama to reverse the Bush decision. The governments of other countries in the region, including Brazil, supported Washington reinstating Bolivia.<sup>2</sup>

Beyond the president's decision itself, inaccurate and distorted portrayals of Bolivian drug control efforts included in the memorandum dismayed Bolivian officials, as detailed below. The memorandum's perplexing criticisms of other aspects of Bolivian law and policy generated additional friction. Predictably, the immediate Bolivian reaction was scathing, with President Evo Morales denouncing Obama as having “lied to Latin America when he told us in Trinidad and Tobago that there are not senior and junior partners.”<sup>3</sup>

Evidently, the Obama administration was internally divided about reinstating Bolivia as an ATPDEA beneficiary, and faced strong opposition from some lawmakers, including Senator Charles Grassley, the Iowa Republican whose membership on the powerful Finance Committee positions him to play a pivotal role on some of the Administration's top legislative priorities this year. The

forward-looking aspirations from the April Summit succumbed to bureaucratic inertia in Washington – Obama’s eventual ATPDEA decision remained tethered to the past.

Although June’s ATPDEA decision complicated the high-level dialogue, both governments still profess a desire to push ahead with talks to strengthen the relationship. A week after the decision, Morales reiterated that Bolivia wanted “the United States’ important presence, but a diplomatic presence, not [one of] interference.”<sup>4</sup> Under U.S. law, the Obama administration will need to decide whether or not to certify that Bolivia is fulfilling its international drug control obligations by September 15. Despite the Bush administration’s drug control de-certification of Bolivia in 2008 and Obama’s ATPDEA decision, the two governments have in fact found considerable common ground on drug control. In the weeks ahead, U.S. officials should take advantage of the high-level bilateral dialogue and significant on-the-ground drug control cooperation to carefully re-evaluate the assertions contained in the June ATPDEA justification and ensure that the September 15 certification decision is based on a more complete understanding of Bolivian efforts.

Repeating the errors and distortions found in the justification for the recent ATPDEA decision, largely inherited from the Bush administration, would not only risk the genuine common ground that does exist on drug control, but raises questions about the future of the high-level dialogue. Indeed, the dialogue itself affords U.S. and Bolivian officials alike the opportunity to appreciate the complicated and difficult issues that surround the drug policy debate in both countries.

## **Inaccuracies Presented in the June 2009 ATPDEA Justification**

### ***Counternarcotics Cooperation***

*“On September 15, 2008, President Bush [...] noted that the Government of Bolivia had failed to take any of the specific CN [counternarcotics] measures the U.S. Government had requested over the previous year, such as making it a top priority to eliminate excess coca production or to limit licit coca cultivation.”*

- President Bush decertified Bolivia in September 2008 to punish Bolivia for having just expelled the U.S. Ambassador, Philip Goldberg, whom President Morales accused of conspiring against the government. Of course, the Bush administration often expressed discomfort over Bolivia’s coca policies. But despite harsh rhetoric on the part of both governments, bilateral drug control cooperation had remained fairly strong. To justify labeling Bolivia a “demonstrable failure” in drug control, the Bush administration resorted to extreme inaccuracies and distortions of the record.<sup>5</sup>
- Despite the tensions following the U.S. ambassador’s expulsion, the Bolivian government and the U.S. embassy’s Narcotics Affairs Section (NAS) have continued to coordinate closely on coca reduction and interdiction efforts.
- On April 7, 2009, the U.S. and Bolivian governments signed a new bilateral drug control agreement, entailing \$26 million in U.S. funding to support coca reduction.
- For the coming year, the Bolivian government budgeted \$20 million for drug control programs, a significant increase from previous years. With these increased funds, the Bolivian government assumed greater responsibility for coca reduction and interdiction

efforts, including fuel, rations, transport, and aviation operations, all of which the U.S. government previously funded. According to Bolivian Minister of Government, Alfredo Rada, the new bilateral accord and Bolivia's increased budget allocation "guaranteed the conditions necessary to continue operations in the fight against drug trafficking."<sup>6</sup>

*"The loss of [the U.S. Drug Enforcement Administration] DEA presence and its information network has severely diminished Bolivia's interdiction capability both in the short and long term."*

- Contradicting this assertion, three paragraphs later the memorandum itself states that the "Bolivian government has maintained its support for interdiction efforts." The memo notes, moreover, that "Interdiction of drugs and precursor chemicals continues to rise, and the Bolivian counternarcotics police and other CN units have improved coordination effectiveness." (As the memo also acknowledges, more drug seizures can be a function of more drugs, not just more or better-targeted enforcement.)
- In any case, according to official Bolivian figures, the number of interdiction operations and seizures has increased since the DEA's departure. Between November 1, 2008, when the DEA ceased operating in Bolivia, and June 7, 2009, Bolivian anti-drug forces carried out 7,058 missions, confiscating 1,818 kilograms of cocaine and marijuana. During the same period a year earlier, with DEA support, anti-drug forces conducted 6,903 missions and seized 1,136 kilograms of illegal drugs.<sup>7</sup>
- In an effort to replace cross-border intelligence-sharing, which U.S. officials regard as the most important role played by the DEA in Bolivia,<sup>8</sup> the Bolivian government has signed bilateral agreements with three neighboring countries since the DEA's departure:

On February 18, 2009, the Bolivian National Police and the Brazilian Federal Police signed an agreement for cooperation against drug trafficking and international organized crime, including logistical support in crop eradication, air transport, joint missions, cross-border intelligence exchange, training, translation and monitoring. Brazil is the destination for the majority of the cocaine produced in or transshipped through Bolivia.

On June 24, 2009, Bolivia and Paraguay signed an antinarcotics agreement, with a special focus on border control and anti-drug intelligence-sharing.<sup>9</sup>

On January 13, 2009, Bolivia and Argentina, the second-largest destination of Bolivian cocaine, signed a similar agreement.<sup>10</sup>

*"The United Nations and other CN experts indicate that coca cultivation continues to increase."*

- For 2008, the UN Office on Drugs and Crime (UNODC) reported a 6 percent increase in the land under coca cultivation in Bolivia.<sup>11</sup> In both Bolivia and Peru, UNODC has reported increases in coca growing each year since 2005. Still, Bolivian coca growing accounts for just 18.2 percent of the Andean total, behind Peru (33.5 percent) and Colombia (48.3 percent).<sup>12</sup> According to UNODC, Bolivian cocaine production has also increased, but remains just 13 percent of the Andean total, far behind Peru and Colombia.

*“Bolivia’s Law 1008 authorizes the cultivation of up to 12,000 hectares of coca for licit use.”*

- The 12,000-hectare limit for coca growing was arbitrarily established as part of Law 1008 in 1988. It does not represent a scientifically-derived, widely agreed-upon estimate of the amount of coca needed for legal consumption of the coca leaf and related products.
- Even at the peak of U.S.-funded forced eradication, coca cultivation never dropped below the 12,000-hectare ceiling established by Law 1008.
- The European Union (EU) is currently funding a comprehensive study that the Morales government has agreed to use as a guideline to set the legal limit for coca cultivation. Results of the EU-funded study should be available in 2010. Meanwhile, the Morales government has temporarily established a 20,000-hectare ceiling on coca growing.

*“Regulation and control of the licit coca commerce is virtually non-existent in Bolivia and leads to high levels of diversion for cocaine production.”*

- According to UNODC, a complex regulatory system for legal coca markets is in place, although Bolivian anti-drug authorities recognize that it has flaws:

“In Bolivia, the commercialization of coca leaf is regulated by the General Director of Commercialization and Industrialization of Coca Leaf (DIGCOIN) [...] which controls the circulation of commercialized coca leaves in two markets: Villa Fatima in the city of La Paz and Sacaba, near the city of Cochabamba. [...] DIGCOIN authorizes on a monthly basis a fixed quantity of each [approved] type of commercialized coca. The authorization of DIGCOIN specifies the origin of the coca leaf and the point of final destination for its sale. Coca is sold [...] in packets no larger than 15 pounds.”<sup>13</sup>

- According to UNODC, in 2008 there was a 13 percent increase in coca sales to the government agency that regulates market prices and quantities in the major coca producing regions. Bolivian anti-drug law states that the Executive branch should establish coca commercialization and monitoring policies.<sup>14</sup>

*“The current challenges include explicit acceptance and encouragement of coca production at the highest levels of the Bolivian government.”*

- In interviews, U.S. drug control officials in Bolivia have pointed to U.S. collaboration with the Bolivian government’s coca control policy. In spite of bilateral tensions after the expulsion of Ambassador Goldberg and the DEA, this coordination continued.
- Similarly, a U.S. drug control official affirmed in February 2009 that increased coca production was not due to the Morales administration’s lack of political will, but to the unwillingness on the part of some coca growers to comply with limits set by the government, despite significant efforts by the government to negotiate compliance.<sup>15</sup>

- In response to UNODC's June 2009 report, Bolivian Drug Czar Felipe Cáceres publicly recognized Bolivia's responsibility to reduce 10,500 hectares of coca. "If there are 30,500 hectares, there is an excess of 10,500 ... and this has to be eradicated in the coming years."<sup>16</sup>

*"...government tolerance of and attractive income from increased and unconstrained growth of coca cultivation in both the Yungas and the Chapare regions; and increased and uncontrolled sale of coca to drug traffickers."*

- The Bolivian government has continued to enforce the *cato* system that allows each coca growing union member family to cultivate a 1,600 square-meter plot of coca (about one-third the size of a football field). This system has eliminated protests, conflict, and human rights violations in the Chapare region and has provided a legal source of subsistence income for farmers.
- In March 2009, the State Department's annual International Narcotics Control Strategy Report (INCSR) noted the Bolivian government's announcement of a coca-growing ceiling of 20,000 hectares. The ceiling is intended as a limit, not as an invitation to "unconstrained growth of coca cultivation." In September 2008, the Bolivian government signed an agreement with 25,000 coca growers from the Yungas federation to eradicate 6,900 hectares of coca by 2010.
- In June 2009, UNODC noted that where the *cato* system had been successfully implemented, farmers generally respect the government-mandated limit. "Aerial photographs and videos obtained during monitoring, like last year, clearly demonstrate a tendency to grow coca in *cato*-sized plots."<sup>17</sup>
- On June 20, Drug Czar Felipe Cáceres announced the initiation of forced eradication in areas of concern identified by the UNODC (the national parks Yapacani and La Asunta) in an effort to comply with Bolivia's international responsibilities,<sup>18</sup> in spite of the high social cost forced eradication would incur.
- In coordination with the EU, the Morales administration has instituted an extensive Social Control Program in the Yungas and Chapare to control coca production in coordination with communities. The program reinforces pre-existing sanctions for violations of the *cato* limit, such as losing the right to grow coca and, for repeat offenders, loss of property rights to land where illegal coca is grown.
- While the memorandum might be read to imply that Bolivian government officials enjoy direct, monetary benefits of coca and/or the drug trade, the State Department's March 2009 INCSR noted that, "There are no proven cases of senior GOB officials encouraging or facilitating the illicit production or distribution of narcotic or psychotropic drugs or other controlled substances, or the laundering of proceeds from illegal drug transactions."<sup>19</sup>

*"The efficiency and success of eradication efforts have significantly declined in the past few years."*

- The Morales administration has met or surpassed its coca reduction target of 5,000 hectares each year<sup>20</sup> and is on track to do so for 2009;<sup>21</sup> Law 1008 mandates annual coca reduction between 5,000 and 8,000 hectares.<sup>22</sup>
- The Morales Administration on average has reduced more coca per year than the first Sánchez de Lozada administration, and a higher percentage of the coca crop.<sup>23</sup>

### ***Investment Policies***

*“Article 56 of the new Bolivian Constitution provides that property may be expropriated for the public good or when the property does not fulfill a ‘social purpose,’ a term that is not fully defined in Bolivian law. However, Article 56 also stipulates that just compensation must be provided.”*

- In fact, this constitutional norm is almost identical to the text of the previous Bolivian constitution, although it now contains a specific prohibition of the expropriation of urban property.<sup>24</sup>
- This article in both versions of the Bolivian constitution refers to eminent domain, also stipulated in the 5<sup>th</sup> Amendment to the U.S. Constitution.<sup>25</sup> According to U.S. Supreme Court decisions, eminent domain “appertains to every independent government. It requires no constitutional recognition; it is an attribute of sovereignty.”<sup>26</sup>
- The concept of “social purpose” has been clearly defined in Bolivian legislation and has been a Bolivian constitutional norm for over 70 years.<sup>27</sup> The concept of social purpose appears in the Spanish, Italian and many Latin American constitutions.<sup>28</sup>
- Article 57, not Article 56, stipulates compensation for expropriation for public use.<sup>29</sup>

*“A United States-Bolivia BIT [bilateral investment treaty] entered into force in June 2001. The Bolivian government has expressed an interest in renegotiating the BIT.”*

- It is surprising that the United States raised concerns about another country’s interest in renegotiating a BIT, since the Obama administration is conducting its own review of the U.S. model bilateral investment treaty.<sup>30</sup>
- BIT renegotiation is far from unprecedented. According to the United Nations Conference on Trade and Development (UNCTAD), countries have renegotiated more than 120 bilateral investment treaties, in some cases to reflect social and environmental concerns and the host country’s right to regulate.<sup>31</sup>

### **Conclusion**

The Obama White House has deliberately dropped the term “war on drugs” from its lexicon, and good riddance. Actual policy change is another matter. With another drug control certification decision looming on September 15, the Obama administration has the chance to move beyond the distortions that have come to dominate perceptions of Bolivian drug policy in Washington. Like

supply-side drug control efforts in other countries, Bolivia's coca reduction and cocaine interdiction programs face tremendous obstacles. But the Morales administration has demonstrated a clear commitment to meeting its international obligations with a wide array of bilateral and multilateral partners. The United States can choose to help strengthen Bolivia's efforts through cooperation under the terms of the new framework being negotiated as part of the high-level dialogue, or the United States can distance itself. The September 15 certification decision could be telling.

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## NOTES

- <sup>1</sup> See "Decertifying Bolivia: Bush Administration 'Fails Demonstrably' to Make its Case," Kathryn Ledebur, Andean Information Network, and John Walsh, Washington Office on Latin America, October 2008.
- <sup>2</sup> Letter from Brazilian Minister of Foreign Relations, Celso Amorim, to U.S. Secretary of State Clinton, 29 June 2009.
- <sup>3</sup> Simon Romero, "Bolivia: President Denounces Obama Over Trade," *New York Times*, 2 July 2009.
- <sup>4</sup> "Morales acepta que EEUU tenga 'presencia importante' en Bolivia," Associated Press, 9 July 2009.
- <sup>5</sup> For a detailed critique of the 2008 decertification, see: "Decertifying Bolivia: Bush Administration 'Fails Demonstrably' to Make its Case." Kathryn Ledebur, Andean Information Network, and John Walsh, Washington Office on Latin America, October 2008.
- <sup>6</sup> "Estados Unidos cede, otorgará más de 26 millones de dólares para la lucha antidroga," *Erbol* 7 April 2009.
- <sup>7</sup> Bolivian government statistics, via AIN written communication with Bolivian drug control official.
- <sup>8</sup> AIN interview, February 2009; AIN-WOLA interview, July 2009.
- <sup>9</sup> ABI, "Bolivia y Paraguay sellan pacto de lucha conjunta contra el 'crimen organizado,'" 24 June 2009.
- <sup>10</sup> "Bolivia y Argentina firman convenio contra narcotráfico," *El Mundo*, 14 January 2009.
- <sup>11</sup> United Nations Office on Drug and Crime (UNODC), *Monitoreo de Cultivos de Coca: Bolivia*, June 2009.
- <sup>12</sup> UNODC, June 2009.
- <sup>13</sup> UNODC, June 2009, Section 2.4, "Price and Commercialization of Coca Leaf," p. 33.
- <sup>14</sup> "The production, circulation and marketing of coca are subject to State control, through the appropriate agency of the Executive, and shall be the subject of special regulations within the legal framework of the present Law (Article 15, Law 1008). The Executive shall establish a system of permits and monitoring, both for producers and for transporters and merchants (Article 19, Law 1008)."
- <sup>15</sup> AIN interview, La Paz, 10 February 2009.
- <sup>16</sup> "Ofrecen reducir 10,500 hectáreas, pero sin plazos," *La Razón*, 27 June 2009.
- <sup>17</sup> UNODC, June 2009, p. 13.
- <sup>18</sup> "Anuncian erradicación de coca en los parques," *Los Tiempos*, 20 June 2009.
- <sup>19</sup> U.S. State Department, INCSR, March 2009, at <http://www.state.gov/p/inl/rls/nrcrpt/2009/vol1/116520.htm>
- <sup>20</sup> According to the March 2009 INCSR, Bolivia reduced 5,070 hectares of coca in 2006; 6,269 hectares in 2007; and 5,484 hectares in 2008.
- <sup>21</sup> According to the Vice Ministry of Social Defense, from January 1 through July 29, 2009, Bolivia had reduced 3,289 hectares of coca. See <http://www.vds.gov.bo/>
- <sup>22</sup> Artículo 10. Ley del Régimen de Coca y Sustancias Controladas. Ley 1008.
- <sup>23</sup> Gonzalo Sánchez de Lozada – First Presidency (figures from 2000 INCSR)

Year	1993	1994	1995	1996	1997	AVERAGE
<b>Eradication (hectares)</b>	2,397	1,058	5,493	7,512	7,026	4,697
<b>Net Cultivation (hectares)</b>	49,597	49,158	54,093	55,612	52,826	52,257
<b>Eradicated as % of Net</b>	4.8	2.2	10.2	13.5	13.3	9.0

**Average eradication as a percentage of average net coca cultivation: 9.0%**

Evo Morales – Presidency to Date

Year	2006	2007	2008	AVERAGE
<b>Eradication (hectares)</b>	5,070	6,269	5,484	5,608
<b>Net Cultivation (hectares)</b>	25,800	28,900	29,500	28,067
<b>Eradicated as % of Net</b>	19.7	21.7	18.6	20.0

**Average eradication as a percentage of average net coca cultivation: 20.0%**

State Department, INCSR, March 2009, at <http://www.state.gov/p/inl/rls/nrcrpt/2009/vol1/116520.htm>

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<sup>24</sup> Previous Bolivian Constitution (1967): “Artículo 22 – Garantía de la propiedad privada. I. Se garantiza la propiedad privada siempre que el uso que se haga de ella no sea perjudicial al interés colectivo. II. La expropiación se impone por causa de utilidad pública o cuando la propiedad no cumple una función social, calificada conforme a ley y previa indemnización justa.”

Current Bolivian Constitution: “Artículo 57 – La expropiación se impondrá por causa de necesidad o utilidad pública, calificada conforme con la ley y previa indemnización justa. La propiedad inmueble urbana no está sujeta a reversión.”

<sup>25</sup> U.S. Constitution, 5<sup>th</sup> Amendment: “...nor shall private property be taken for public use, without just compensation.”

<sup>26</sup> *Boom Co. v. Patterson*, 98 U.S. 403, 406 (1879); *United States v. Carmack*, 329 U.S. 230, 241-42 (1946), see <http://caselaw.lp.findlaw.com/data/constitution/amendment05/14.html#f161>

<sup>27</sup> The concept of social purpose has been part of the Bolivian Constitution since 1938. Article 17 of the 1938 constitution stated, “La propiedad es inviolable, siempre que llene una función social; la expropiación podrá imponerse por causa de utilidad pública, calificada conforme a ley y previa indemnización justa.” Constitución Política del Estado de 1938. <http://www.cervantesvirtual.com/servlet/SirveObras/01476284433725484232268/p0000001.htm>. The concept has appeared in every subsequent constitution and has been thoroughly defined in the 1996 and 2006 agrarian reform laws: Law 3545 28 Nov. 2006. (Modifying Law 1715). Law No 1715 del 18 Octubre 1996, Ley de Servicio Nacional de Reforma Agraria.

<sup>28</sup> The concept of social purpose (función social) first appeared at the turn of the century. See “La Función Social de la Propiedad.” 1 July 2008, at Juris Civilis, <http://www.iuriscivilis.com/2008/07/la-funcin-social-de-la-propiedad.html>.

The Constitutions of Chile, Colombia, Brazil, Ecuador and Argentina contain similar stipulations.

<sup>29</sup> Artículo 57. “La expropiación se impondrá por causa de necesidad o utilidad pública, calificada conforme con la ley y previa indemnización justa. La propiedad inmueble urbana no está sujeta a reversión.”

<sup>30</sup> E-mail communication with Sarah Anderson, Institute for Policy Studies.

<sup>31</sup> UNCTAD, *World Investment Report 2008*, p. 15. “At the same time, a growing number of BITs [bilateral investment treaties] are being renegotiated. In fact, as many as 10 of the 44 (23%) BITs signed in 2007 replaced earlier treaties. This brought the total number of renegotiated BITs to 121 at the end of 2007. To date, Germany has renegotiated the largest number of BITs (16), followed by China (15), Morocco (12) and Egypt (11). This number may rise, as many BITs are becoming relatively old, and more countries are revising their model BITs to reflect new concerns related, for example, to environmental and social issues, and the host country’s right to regulate. Environmental considerations are also featuring in negotiations of new BITs (e.g. one under way between Canada and China). Furthermore, a growing number of recent agreements mark a step towards a better balancing of the rights of foreign investors, on the one hand, and respect for legitimate public concerns on the other.”