

## The Duality of Cannabis Regulation According to INCB: How INCB Concludes that Cannabis Legalization Has Not Achieved Intended Objectives While Providing Evidence to the Contrary

A response to the annual report of the International Narcotics Control Board

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### Introduction

The International Narcotics Control Board (“INCB”) released its [“Report of the International Narcotics Control Board for 2022 \(E/INCB/2022/1\)”](#) (the “Report”),<sup>i</sup> which dedicates an entire section to discussing the “Analysis of the trend to legalize the non-medical use of cannabis.”<sup>ii</sup> In the report, the INCB argues that legalizing the non-medical and non-scientific use of cannabis (“Regulation”) has failed to achieve the benefits to society that were intended through such legalization. In its attempt to deliver evidence of this failure, INCB instead provides ample evidence to the contrary—that legalization and regulation work. Accordingly, INCB’s conclusion that Regulation has failed to achieve the intended societal benefits is irrational, illogical, and an abuse of INCB’s authority to remain a disinterested and impartial mediator of the Conventions.

The International control of narcotic drugs and psychotropic substances is coordinated between Member States<sup>iii</sup> [pursuant to a framework established by three international treaties](#): the Single Convention on Narcotic Drugs of 1961 (the “Single Convention”); the Convention on Psychotropic Substances of 1971 (the “’71 Convention”); and the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (referred to hereinafter together with the Single Convention and ’71 Convention as the “Conventions”).<sup>iv</sup> INCB is the [“independent and quasi-judicial expert body”](#) tasked with monitoring compliance with Conventions<sup>v</sup> and “facilitat[ing] effective national action to attain the aims of [the Conventions].”<sup>vi</sup> With specific exceptions not relevant to this article, the Conventions prohibit the non-medical, non-scientific regulation of commercialized cannabis. Therefore, Member States must find internationally recognized alternatives to Regulate cannabis.

INCB, as the “independent and quasi-judicial monitoring body,” has a mandate to work with Member States to achieve greater uniformity under the Conventions. In circumstances where INCB’s interpretation is at odds with that of Member States, INCB’s role as a monitoring body is to work to reconcile such differences, to review the best approaches that arise from the debate, and assess the options that emerge as the debate progresses.<sup>vii</sup> In cases where Member States appear to be violating the Conventions (in furtherance of promoting the health, safety, and welfare of society) [INCB is tasked with assisting such governments in overcoming their apparent violations](#).<sup>viii</sup> Here, where Member States interpret the Conventions to support legal cannabis frameworks (because such frameworks are more effective than prohibition in promoting public health and welfare), INCB must be grounded in its obligation to work with Member States to harmonize Regulated markets with the Conventions, using other internationally recognized approaches. Namely, INCB should promote two alternatives to prohibition: (1) Inter Se Modification (“Inter Se”); and (2) Withdrawal and Recession, with Reservations for marijuana and THC (“Re-accession”). Unfortunately, the Report fails to seek such harmonization, further deteriorating compliance under the Conventions, which will lead to greater diversion, youth access, and harms for society.

Prohibition is a failed policy. As such, many Member States are intent on liberalizing their positions on cannabis through Regulation because it is more effective at promoting the health, safety, and welfare of mankind. In the Report, however, INCB illogically concludes that Regulation is failing society—despite the evidence cited by INCB—which clearly supports that Regulation has had undeniable success in: (1) substantially reducing the illicit market (60% reduction in Canada, 50% reduction in Uruguay, and 25% reduction in California);<sup>ix</sup> (2) successfully prohibiting sales and marketing to minors;<sup>x</sup> (3) not leading to an increase in youth access, and reducing such access and use in most, if not all, Regulated markets;<sup>xi</sup> (4) ensuring that better medical care is available in markets that have Regulated, most likely due to the de-stigmatization of cannabis in Regulated markets;<sup>xii</sup> and (5) reducing burdens on the criminal justice system, lowering costs associated with prohibition, and allowing law enforcement to focus on more pressing issues.<sup>xiii</sup>

INCB’s conclusion appears to be fabricated on nothing more than a desire to eliminate Regulated markets, rather than reaching a conclusion based on the evidence cited. For example, [the INCB's official overview of its Regulation section of the Report](#),<sup>xiv</sup> states that “Legalized non-medical use of cannabis . . . does not reduce criminal activity,” but within the Report, INCB provides clear evidence (as stated above) that Regulation decimates (but does not eliminate) black market participation. INCB tries, but fails, to thread a needle between lacking sufficient evidence to conclude whether Regulated markets harm or promote the health, safety, and welfare of mankind, and concluding “in general terms, that Regulation has not achieved the objectives pursued by its proponents.”<sup>xv</sup> As discussed in this article, instead of presenting objective facts for Member States to review and reconcile differences, INCB inserts its opinion as fact, misrepresenting the true effects of Regulation. INCB once again exceeds its obligation to remain impartial

and disinterested by pushing a false narrative that lacks a coherent analysis or support for its conclusion.<sup>xvi</sup>

INCB's conclusion not only lacks factual support, and is contrary to the evidence it cites, but also promotes unlawful requirements on Member States. INCB believes that countries can, and should, ignore Constitutional restrictions to ensure compliance with the Conventions. It notes that if a Member State has a Constitution that prohibits the Federal Government from forcing local jurisdictions, or its citizens, to implement Drug Convention requirements, it must do so anyway.<sup>xvii</sup> This position is unworkable, incompatible with law and practicality, and dangerous. If a Member State's Constitution prohibits the Federal Government from enforcing requirements on local jurisdictions, or its citizens, then the Federal Government will not, and should not, enforce such requirements. Pushing any other narrative is dangerous, risking the stability of Constitutional Governments.

INCB's mandate is to work with Member States to reconcile differences between Member States' positions, assessing the options that emerge as the debate progresses. Accordingly, INCB must recognize the reality and unambiguous evidence that Regulated markets benefit the health, safety, and welfare of society. As such, INCB must recognize this reasonable Regulation strategy being implemented, or discussed, by Member States and work with those governments to reconcile violations under the Conventions. Simply stating that such Regulation must cease is unworkable and INCB should, instead, provide an unbiased assessment that includes reasonable approaches under International law. Regulated markets are only going to expand, and a strict interpretation of the Conventions that ignores the evidence and the continued growth of robust public health and safety requirements inherent in every Regulated system, is no longer a realistic option. Such a strict interpretation is incompatible with both the regimes of Member States' and the INCB's obligation to be an objective and independent monitoring body of the Conventions.

## **The War on Cannabis Has Failed, Regulation is the Only Safe and Effective Way Forward**

### **Prohibition is a Failed Model**

The Prohibition of Regulated cannabis has failed. "With prohibition in force for the past 60 years, cannabis is still the world's most widely used illicit drug. In 2020, roughly 4% of the world's population used cannabis and that number has raised by 23% over the past decade."<sup>xviii</sup> Each year, more countries seek to explore Regulation frameworks,<sup>xix</sup> understanding that the "War on Cannabis" is a failed strategy, and that responsible Regulation is a common-sense path toward promoting the health, safety, and welfare of mankind. Regulation, in the face of decriminalization or depenalization (collectively, "Decriminalization"), is the only responsible and effective way forward. Without

Regulation, the Decriminalization of cannabis could lead to a thriving black market, with the risk of enforcement diminished.

## **Decriminalization**

Through its irrational interpretation of the Conventions, INCB undermines the health, safety, and welfare of society by pushing compliance above all else. It is counterintuitive and contrary to clear and unambiguous evidence, to conclude that non-regulated Decriminalized markets are safer for society than Regulated Decriminalized markets. Decriminalization (even when focused on the possession of small amounts) allows access to a prohibited substance without manufacturing, testing, sale, and other fundamental consumer safety regulations. INCB's position that allowing less-safe, unregulated illicit substances promotes public health and safety is unfounded and dangerous. Since cannabis consumers represent roughly 4% of the world population,<sup>xx</sup> INCB promotes a policy that will increase diversion and access to harmful unregulated products sold by illicit traffickers. This does not square with the Conventions' aim of ensuring the health, safety, and welfare of mankind.

## **Regulation Reduces Black Market Participation**

INCB purports that since Regulated markets have not eliminated the black market, then Regulation has failed. Stating that “[l]egalized non-medical use of cannabis . . . does not reduce criminal activity,” is false, and not supported by INCB's own statistics. Since Regulation, the illicit market has been reduced by 60% in Canada, 50% in Uruguay, and 25% in California.<sup>xxi</sup> Under any objective analysis, this would be applauded as a major success, rather than criticized as a failure. The illicit market will, of course, never be eliminated. The goal, instead, should be reduction, and, to that end, Regulation has succeeded beyond all expectations.

### *Focusing Only on Medical and Scientific Uses Fails to Promote the Health, Safety, and Welfare of Mankind*

[INCB favors a pharmaceutical approach](#) to the Conventions, promoting it as the best method of advancing the health, safety, and welfare of mankind.<sup>xxii</sup> Without citing the clear negative consequences of pharmaceutical models, including high hospitalization and death rates (as discussed below), INCB uses higher consumption rates of cannabis as evidence that Regulation is failing. This discussion, however, ignores the benefits cannabis has on society and cannabis' efficacy as an “exit drug” for persons addicted to far more dangerous substances such as: (1) pharmaceutical opioids; and (2) alcohol. Whether legal or not, people are going to continue to use cannabis to escape the dangers of opioids and alcohol, so access to Regulated products is a smarter policy than prohibition.

## **Cannabis v. Prescription Drugs and Alcohol**

“The [Drug] Conventions reflect the international community's view that the most effective way to promote human rights in the field of drug control is to limit the use of drugs to medical and scientific purposes.”<sup>xxiii</sup> This is simply outdated and illogical. While there is certainly a real need to continue researching cannabis' effects on health,

promoting a prohibition-only approach to Regulation due to its *potential harm* is absurd when approved pharmaceutical products are killing hundreds of thousands of people each year due to their *actual harm*. In 2021, [106,699 people died from a prescription drug overdose](#) in the US alone.<sup>xxiv</sup> These deaths include both illicit and licit use, but either way, medical prescriptions led to these deaths. Cannabis has been the cause of maybe one overdose death in recorded history.<sup>xxv</sup>

Cannabis has a safer profile than many popular pharmaceutical drugs on the market. For example, Jazz Pharmaceuticals (producer of the cannabis drug Epidiolex), sells a [pharmaceutical medication called Xyrem](#) that can lead to confusion, psychosis, hallucinations, agitation, depression, thoughts of suicide, sleepwalking, and shallow breathing (especially during sleep).<sup>xxvi</sup> [Tylenol is the leading cause of Poison Control Centers calls](#), accounting for more than 56,000 emergency room visits and 2,600 hospitalizations each year.<sup>xxvii</sup> [Benzodiazepines, like Xanax, Valium, and Klonopin can cause fatal respiratory depression](#).<sup>xxviii</sup> [Albuterol, the third most popular prescription in the US](#) can cause irregular, pounding, or racing heartbeat or pulse, and shakiness in the legs, arms, hands, or feet.<sup>xxix</sup> [Gabapentin, the sixth most popular pharmaceutical in the US](#) (and a substance excluded from the Conventions) can cause clumsiness or unsteadiness; continuous, uncontrolled, back-and-forth, or rolling eye movements; and for children, it can cause aggressive behavior, anxiety, concentration problems, depression, and a false sense of well-being.<sup>xxx</sup>

[Cannabis use, on the other hand, has minor known side effects](#), including, headaches, dry mouth and eyes, lightheadedness and dizziness, fatigue, nausea and vomiting, disorientation, hallucinations, and increased heart rate.<sup>xxxi</sup> Like the dangers associated with many common pharmaceutical drugs, [alcohol use is far more dangerous to society than cannabis, causing an estimated three million deaths per year worldwide](#).<sup>xxxii</sup> As such, substitutes for dangerous pharmaceutical drugs and alcohol should be sought, not demonized. Rather than causing death or widespread dangers to society, studies show that [Regulating cannabis use can reduce alcohol dependency and the use of prescription opioids](#), improving the lives of its users.<sup>xxxiii</sup> If INCB wants to prohibit the Regulation of an “exit drug” that could save millions of lives, then let’s not pretend it is to promote the health, safety, and welfare of mankind.

## INCB’s Federalism Problem

The Conventions require Member States to prohibit Regulation in all territories within their jurisdiction.<sup>xxxiv</sup> Even if a Member State is precluded by its Constitution to prohibit Regulation, then INCB’s inappropriate interpretation of the Convention requires that it must nevertheless do so.<sup>xxxv</sup> This narrow interpretation, however, ignores that if a Member State’s Constitution prohibits such enforcement, a Member State may not have the authority, or an ability, to require its local jurisdictions, or citizens, to comply with the Conventions. For example, the Anti-Commandeering doctrine found within the Tenth Amendment of the United States Constitution, [prohibits the US Federal Government from forcing state legislatures to pass cannabis prohibition laws](#).<sup>xxxvi</sup> Since the US

Constitution is the foremost legal authority in the US, the US will be unable to enforce a prohibition on the State legal markets. Similarly, in 2018, the Supreme Court of Mexico held that “the law prohibiting recreational use of cannabis in Mexico was unconstitutional.”<sup>xxxvii</sup> Therefore, the Mexican government cannot prohibit personal recreational use without violating its own Constitution.

With Federal Governments handcuffed to Constitutional obligations, INCB must focus on realistic options that harmonize Constitutional obligations with Drug Convention requirements rather, than pushing unworkable and illegal options that will further deteriorate the legitimacy of INCB and the Conventions.

## Workable Alternatives for INCB: Inter Se v. Re-accession

For over 60 years, the Conventions have failed to eliminate the illicit cannabis market. One would think that after failing at the same strategy for so long, INCB would promote a new tactic. The tactic with the most evidentiary support is one that INCB is adamant about refuting—Regulation. Despite INCB’s false narrative stating otherwise, Regulation, if done correctly, could lead to greater transparency of cannabis reporting requirements, a substantial reduction in diverted cannabis, and allow law enforcement to focus on real harms to society.<sup>xxxviii</sup>

Amending the Drug Convention to remove marijuana and THC from control requires global consensus among Member States, which is not currently a realistic option. Therefore, there are two primary mechanisms<sup>xxxix</sup> under which a Member State could Regulate cannabis without directly violating its obligations under the Conventions: (1) Inter Se modification between the likeminded Regulating Member States; and (2) Withdraw and Re-accession with Reservations for marijuana and THC. Regulating Member States would likely be eager to [collaborate with INCB](#) to “work[] with treaty partners to identify solutions that accommodate different approaches to cannabis within the international framework.”<sup>xl</sup>

### Inter Se Modification<sup>xli</sup>

Inter Se modification is a procedure allowed under [Article 41 of the 1969 Vienna Convention on the Law of Treaties](#) (“VCLT”)<sup>xlii</sup> and is specifically designed to find a balance between treaty regime stability and the need for change in the absence of consensus. Inter Se modification would offer a pathway for like-minded countries committed to the responsible Regulation of cannabis under international law. It is important to note that Inter Se agreements [modify a treaty between themselves alone](#) and do not alter the general regime, to which the parties to the Inter Se agreement remain bound.<sup>xliii</sup> An Inter Se agreement is not subject to objections and therefore cannot be procedurally prevented, but [article 41 is designed to ensure that such agreements do not provide a back door](#) to the amendment of the treaty as a whole.<sup>xliiv</sup>

While some argue that the Inter Se exception does not apply to the Conventions, since they entered into force before the Vienna Convention, [it is widely believed that such an exception could actually be made.](#)<sup>xlv</sup> The Single Convention was substantially amended

by the 1972 Protocol and practically all parties to the original treaty acceded to the Single Convention as amended three years after the conclusion of the VCLT. Even though article 4 of the VCLT applies a principle of non-retroactivity, many conclude that the VCLT largely consolidated customary international law and only “arid formalism would insist that a rule such as that contained in article 41 was not a ‘rule of international law’ as anticipated in article 4 of the VCLT, applicable to a general dispute about a treaty.”<sup>xlvi</sup>

If INCB, acknowledged that its “arid formalism” has failed, it could harmonize Regulating Member States under an Inter Se agreement, which would: (1) re-align Member States that are already implementing Regulation with their other obligations under the Conventions; and (2) lessen the amount of diverted cannabis on the market, since Regulated markets dramatically reduce illicit markets.<sup>xlvii</sup>

While there is the risk that other countries may apply this exception to a dangerous drug, or apply Inter Se under a different treaty, that fear should be easily quelled since the VCLT requires that an Inter Se agreement not: (i) “affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;” (ii) “relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole.”

## **Withdraw and Re-accession**

Under this approach, Regulating Member States would withdraw from their obligations under the Conventions and then rejoin the treaty system, subject to specific reservations to the control of marijuana and THC. Re-accession would allow a Member State to implement a commercial market for marijuana and THC within that Member State’s borders, but would not permit international trade. Withdrawal alone can have serious political and economic implications, especially for less powerful countries. Procedurally, a Member State could be blocked from re-joining with reservations if one-third or more parties to the treaty object (roughly 61 countries would need to object). INCB could coordinate with Member States to help ensure the Re-accession would not be blocked, and that the other Drug Convention requirements were obeyed during the withdrawal.

The only precedent for employing this procedure under the Treaties occurred in 2012 when Bolivia withdrew from the 1961 Single Convention and successfully Re-acceded a year later, with a reservation clarifying that Bolivia no longer accepts the Single Convention’s control of coca leaf in its natural state. The US was one of 17 countries that formally objected to Bolivia’s Re-accession procedure (well short of the one-third of treaty parties required to have blocked Bolivia from Re-acceding). If the US, or any other country that opposed Bolivia’s re-accession, wishes to avail itself of this option, the US Government would be well advised to first withdraw its Bolivia objection—as Mexico did in 2018—to preempt legitimate accusations of hypocrisy.

Rather than demonizing Regulation, INCB should coordinate with like-minded nations to implement one of the above options. In doing so, INCB would assist Regulated nations with harmonizing their laws under the Conventions while ensuring that non-Regulated

countries do not experience a “[spill-over effect](#).”<sup>xlviii</sup> In its deliberations, INCB could [seek to expand reporting requirements for Regulating Member States](#) to include the cannabis that would become licit under Regulation but remain illicit under the Conventions for the other parties.<sup>xlix</sup>

## Conclusion

While research on the effects of Regulation is certainly needed and continued research on the pros and cons of all regulatory structures is important, it is clear that evidence supports the efficacy and safety of Regulation. INCB’s flawed conclusion simply ignores the data in favor of its “Reefer Madness” views on Regulation. It is a fact that the illicit market for cannabis will never be eliminated, and therefore reduction of this market should be viewed as a success. It is a fact that Regulation has decimated the illicit market in jurisdictions that Regulate. Evidence supports that [cannabis is safer than fentanyl, heroin, methamphetamine and other widely diverted substances](#), and if INCB continues to fail at harmonizing Regulated systems with the Conventions, protections against these dangerous drugs will deteriorate.<sup>i</sup> Regulation of all substances under control is the most effective approach to public safety. People will continue to use drugs no matter their legal status. As such, regulation—rather than prohibition—is the best way to promote public safety. It is a fact that Regulation works.

INCB’s outdated and unreasonably narrow interpretation of the Conventions must modernize if its relevance is to survive. Much has changed since the Single Convention was ratified. The world once thought cigarettes were healthy, alcoholism was not a diagnosable disease, and [cannabis prohibition was promoted by the US, at the 1961 Single Convention, to promote racist ideologies](#).<sup>ii</sup> Because knowledge grows with time, we now know that alcohol and tobacco are the cause of over 15 million deaths per year and cannabis has a safer profile than Tylenol. While there is a limitation to how much you can modernize a treaty, there needs to be room for evolution based on education and risk prioritization.

What we need now is real guidance from INCB that leads the world into an era where cannabis is Regulated in Member States that choose to do so to advance public safety. Cannabis is already being Regulated around the world and that trend is only increasing as jurisdictions recognize the failures of prohibition and the benefits of responsible Regulation.<sup>iii</sup> INCB’s approach indicates that [INCB prefers subjecting society to dangerous unregulated black market products](#), instead of safer regulated and tested ones.<sup>iiii</sup> Rather than promoting unworkable methods for Regulating Member States to get into compliance, INCB (as a fair and unbiased mediator of the Conventions) should seek alternatives like Inter Se and Re-accession. This would allow INCB to coordinate with Member States on enforcing the requirements it really cares about (reporting requirements and diversion prevention), while allowing countries to move forward with Regulation. Doing so under these internationally accepted exceptions will strengthen both the Conventions and Member States’ obligations thereto.



INCB, instead, promotes a false and biased conclusion that Regulation does not promote the health, safety, and welfare of society—despite providing evidence to the contrary. Until INCB accepts that its outdated philosophy on Regulation is a failed approach, Member States will continue to violate the Conventions and implement common sense Regulation without INCB involvement—risking public health and safety and the legitimacy of the treaty system as a whole.

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<sup>i</sup> [Report of the International Narcotic Control Board for 2022 \(E/INCB/2022/1\)](#).

<sup>ii</sup> INCB Report 2022

<sup>iii</sup> The term “Member States,” as used herein, refers to the signatories of the Conventions.

<sup>iv</sup> [Vicente Sederberg LLP, Memo to INCB Regarding International Control of CBD Preparations and the Impacts of Potential Reforms \(Dec. 1, 2020\)](#).

<sup>v</sup> [Boister NB, Jelsma M, \*Inter se modification of the UN drug control conventions: An exploration of its applicability to legitimise the legal regulation of cannabis markets \(2018\)\* \(“Boister & Jelsma\)](#).

<sup>vi</sup> INCB Report, pg. 18, citing art. 9, para. 5, of the 1961 Convention, as amended.

<sup>vii</sup> Vicente, Memo to INCB Regarding Draft Guidelines on Control Requirements for Medical and Scientific Cannabis (May 24, 2021), <https://vicentellp.com/insights/incb-memo-draft-guidelines-control-requirements-medical-scientific-cannabis/> (citing International Narcotics Control Board, Our Mission, (last viewed May 17, 2021), <https://www.incbl.org/incb/en/index.html>; INCB, Guidelines on the international drug control requirements for the cultivation, manufacture and utilization of cannabis for medical and scientific purposes, Draft, March 22, 2021, at 2).

<sup>viii</sup> [UNDOC, International Narcotics Control Board \(INCB\) \(last visited March 3, 2023\)](#).

<sup>ix</sup> INCB Report, pg 15.

<sup>x</sup> See INCB Report, pg 7.

<sup>xi</sup> See INCB Report, pg. 12-13.

<sup>xii</sup> See INCB Report, pg. 10

<sup>xiii</sup> See INCB Report, pg. 6

<sup>xiv</sup> [INCB, INCB Annual Report 2022](#).

<sup>xv</sup> INCB Report, pg. 17.

<sup>xvi</sup> INCB Report, pg. 17.

<sup>xvii</sup> INCB Report, pg. 10.

<sup>xviii</sup> INCB Report pg. 1.

<sup>xix</sup> INCB Report pg. 5.

<sup>xx</sup> INCB Report, pg. 1.

<sup>xxi</sup> INCB Report, pg. 15.

<sup>xxii</sup> [Vicente, Memo to INCB Regarding Draft Guidelines on Control Requirements for Medical and Scientific Cannabis \(May 24, 2021\)](#), (citing, INCB, Guidelines on the international drug control requirements for the cultivation, manufacture and utilization of cannabis for medical and scientific purposes, Draft, March 22, 2021).

<sup>xxiii</sup> INCB Report, pg. 9.

- <sup>xxiv</sup> [National Institute on Drug Abuse, \*Drug Overdose Death Rates\* \(last viewed March 5, 2022\).](#)
- <sup>xxv</sup> [National Library of Medicine, \*The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research: Injury and Death\* \(2017\).](#) Notably, when discussing overdoses death in its World Drug Report 2022, the UN: Office on Drugs and Crime did not mention a single death from cannabis use.
- <sup>xxvi</sup> [WebMD, \*Xyrem -Uses, Side Effects, and More\* \(last visited March 5, 2023\).](#)
- <sup>xxvii</sup> [Banyan Treatment Centers, \*Most Dangerous Prescription Drugs\* \(Last visited March 5, 2023\).](#)
- <sup>xxviii</sup> [Banyan Treatment Centers, \*Most Dangerous Prescription Drugs\* \(Last visited March 5, 2023\).](#)
- <sup>xxix</sup> [Mayo Clinic, \*Albuterol \(Inhalation Route\): Side Effects\* \(last visited March 5, 2023\).](#)
- <sup>xxx</sup> [Mayo Clinic, \*Gabapentin \(Oral Route\): Side Effects\* \(last visited March 5, 2023\).](#)
- <sup>xxxi</sup> [Mayo Clinic, \*Marijuana: Safety and Side Effects\* \(last visited March 5, 2023\).](#)
- <sup>xxxii</sup> [National Library of Medicine, \*The impact of alcohol on society: a brief overview\* \(2013\); Statista, \*Key facts on alcohol-related deaths worldwide as of 2022\* \(Nov. 2022\).](#)
- <sup>xxxiii</sup> [Forbes, \*Cannabis As Harm Reduction? Study Shows Patients Who Use It Drink Less Alcohol\* \(Nov. 20, 2020\),](#) (citing [International Journal of Drug Policy, \*Reductions in alcohol use following medical cannabis initiation: results from a large cross-sectional survey of medical cannabis patients in Canada\* \(Dec. 2020\); National Library of Medicine, \*Cannabis Significantly Reduces the Use of Prescription Opioids and Improves Quality of Life in Authorized Patients: Results of a Large Prospective Study\* \(Mar. 2021\).](#)
- <sup>xxxiv</sup> INCB Report, pg. 10.
- <sup>xxxv</sup> INCB Report, pg. 10.
- <sup>xxxvi</sup> [Constitution Annotated, \*Amdt10.4.2 Anti-Commandeering Doctrine\* \(last visited March 5, 2022\).](#)
- <sup>xxxvii</sup> INCB Report, pg. 4.
- <sup>xxxviii</sup> See INCB Report, pg. 15 (stating that the illicit market in Canada has reduced by 60%, 50% in Uruguay, and 25% in California).
- <sup>xxxix</sup> There are several other options for treaty modification not discussed in this article due to their unlikelihood for success.
- <sup>xl</sup> Boister & Jelsma (citing [Chrystia Freeland, Minister of Foreign Affairs, \*The Standing Standing Committee on Foreign Affairs and International Trade \(AEFA\), Evidence, Ottawa, May 1, 2018\*](#)).
- <sup>xli</sup> This paper provides a very brief overview of Inter Se Modification. For a thorough review, please see Boister & Jelsma.
- <sup>xlii</sup> Vienna, 23 May 1969, 1155 UNTS 331, in force 27 January 1980. It should be noted that the United States is not a party to the Vienna Convention, but the United States considers many of the provisions of the Vienna Convention on the Law of Treaties to constitute customary international law on the law of treaties. [U.S Dept. of State, \*Vienna Convention on the Law of treaties\* \(last visited March 5, 2022\).](#)
- <sup>xliii</sup> Boister & Jelsma (citing A/CN.4/L.682, *Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law*, Finalized by M Koskenniemi, International Law Commission (ILC 2006), para 305, p. 157).
- <sup>xliv</sup> Boister & Jelsma.
- <sup>xlv</sup> Boister & Jelsma.
- <sup>xlvi</sup> Boister & Jelsma (citing Shabtai Rosenne in “*The Temporal Application of the Vienna Convention on the Law of Treaties*” in *Cornell International Law Journal*, Volume 4, Issue 1 (1970), p. 1, a p.20).
- <sup>xlvii</sup> INCB Report, pg. 15.
- <sup>xlviii</sup> Boister & Jelsma.
- <sup>xlix</sup> Boister & Jelsma.
- <sup>i</sup> [National Institute on Drug Abuse, \*Drug Overdose Rates\* \(last visited March 5, 2023\).](#)
- <sup>ii</sup> [CATO Institute, \*Marijuana Prohibition Was a Farce from the Beginning\* \(Oct. 13, 2022\).](#)
- <sup>iii</sup> INCB Report, pg. 1.
- <sup>iiii</sup> See [Boston Herald, \*Vapes on black market may contain toxic chemicals, pesticides, harmful flavorings\* \(Jan. 23, 2020\).](#)