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High Time for a Change: How the Relationship Between Signatory Countries and the United Nations Conventions Governing Narcotic Drugs Must Adapt to Foster a Global Shift in Cannabis Law

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HIGH TIME FOR A CHANGE: HOW THE RELATIONSHIP BETWEEN SIGNATORY COUNTRIES AND THE UNITED NATIONS CONVENTIONS GOVERNING NARCOTIC DRUGS MUST ADAPT TO FOSTER A GLOBAL SHIFT IN CANNABIS LAW

INTRODUCTION

Twenty-six-year-old DeMarcus Sanders of Waterloo, Iowa was pulled over by a police officer for playing his radio too loudly.¹ What should have been a routine traffic stop turned into a life-altering arrest when the police officer searched Sanders' car and found marijuana. After pleading guilty, Sanders was sentenced to thirty days in jail, during which time he lost his job, lost credit for classes he was taking towards a college degree, and had his driver's license suspended;² "getting arrested for marijuana possession in Iowa automatically triggers a six-month suspension of one's license. And one has to pay off a certain percentage of court fees and fines before it can be reinstated."³ However, without a license, Sanders' job opportunities were severely limited, and without a job, it was nearly impossible to pay the fees to get his license back.⁴ An inability to move on with one's life as the result of a possession arrest is all too common, especially in the United States.⁵

1. AM. CIV. LIBERTIES UNION, THE WAR ON MARIJUANA IN BLACK AND WHITE: BILLIONS OF DOLLARS WASTED ON RACIALLY BIASED ARRESTS 24 (2013), https://www.aclu.org/sites/default/files/field_document/1114413-mj-report-rfs-rel1.pdf [hereinafter ACLU].

2. *Id.*

3. *Id.*

4. *Id.* at 24–25. Several years after his arrest, "Sanders still owes the state \$2,346 for room and board at the jail, and for fines, court costs, and other fees." *Id.* at 24.

5. *Id.* at 4. The ACLU report found that "between 2001 and 2010, there were over 8 million marijuana arrests in the United States, 88% of which were for possession" (with possession arrests increasing to the point where they now constitute 52% of all drug related arrests as of the report's publication). *Id.* Possession arrests have not only clogged the already crowded prisons in the United States but have the effect of "negatively impact[ing] public

Recently, however, there appears to be a gradual shift in the public attitude towards cannabis in both the United States and abroad. As of 2021, “seventeen states, two territories, and the District of Columbia have legalized small amounts of cannabis (marijuana) for adult recreational use,”⁶ with New York,⁷ Arizona, Montana, New Jersey, and South Dakota among the most recent states to legalize after votes in 2020.⁸ Additionally, as of 2021, twenty-seven states and the District of Columbia have decriminalized small amounts of marijuana.⁹ Along with legislation designed to legalize and decriminalize the use of cannabis products, many states have enacted laws that retroactively expunge marijuana related offenses, especially low level misdemeanors.¹⁰ Though a federal prohibition on cannabis and its related products remains intact, then-President Donald Trump reiterated in September of 2019 the administration’s support for independent state action and an official stance of non-enforcement.¹¹ With Joe Biden’s election as the 46th president

housing and student financial aid eligibility, employment opportunities, child custody determinations, and immigration status” of those convicted. *Id.*

6. *Marijuana Overview*, NAT’L CONF. OF ST. LEGISLATURES (Oct. 17, 2019), <http://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx>.

7. *Id.*

8. German Lopez, *Election Day was a Major Rejection of the War on Drugs*, VOX (Nov. 4, 2020, 9:30 AM), <https://www.vox.com/2020-presidential-election/2020/11/4/21548800/election-results-marijuana-legalization-drug-decriminalization-new-jersey-arizona-oregon-montana>.

9. *Marijuana Overview*, *supra* note 6. In a radical move, Oregon became the first state, in modern times, to decriminalize *all* drugs, mirroring in part Portugal’s model of drug reform. *See* Lopez, *supra* note 8.

10. *Marijuana Overview*, *supra* note 6; *see also* Azi Paybarah, *About 160,000 People in New York See Their Marijuana Convictions Disappear*, N.Y. TIMES (Aug. 28, 2019, updated Aug. 29, 2019), <https://www.nytimes.com/2019/08/28/nyregion/marijuana-records-new-york-city.html>. The article goes on to specify the restrictions of the new law, where “under the new law, the classification of the penalty for possessing between one and two ounces of marijuana has been lowered to a violation, and fines have been capped at \$200. Previously, such possession was a Class B misdemeanor. The fine for possessing less than one ounce of marijuana has been lowered to \$50, from \$150.” *Id.* As a result, 24,409 people in the state will be left without a criminal record in the State of New York, where they previously had one. *Id.*

11. *POTUS: Feds “Allowing States” to Choose Legalization*, NORML BLOG (Sept. 5, 2019), <https://blog.norml.org/2019/09/03/potus-feds-allowing-states-to-choose-legalization/>. President Trump responded to a reporter’s question

of the United States, many are hopeful that the door to a more lenient marijuana policy has been opened further.¹²

A shift in ideology is not only showing on a governmental level, but on a private one as well. The National Football League (NFL), an organization whose policies on marijuana usage amongst its players has long been criticized as “draconian” and hypocritical,¹³ announced in May of 2019 for the first time a cooperative study with the NFL Players Association on the potential use of marijuana as a pain management tool.¹⁴ The study ultimately led to the NFL relaxing its marijuana policies as part of a new collective bargaining agreement between the league and the players union.¹⁵ This comes on the heels of sev-

regarding any federal changes in marijuana law by stating “It’s a very big subject and right now we are allowing states to make that decision. A lot of states are making that decision, but we’re allowing states to make that decision.” *Id.* This is an expansion on the policy set forth by the Obama administration in 2009, which “relaxed the federal prohibition on cannabis by inviting prosecutors to ‘deprioritize’ the fifth against the medical cannabis market” IVANA OBRADOVIC, DAVID WEINBERGER, MICHAEL GANDILHON & NACER LALAM, EXECUTIVE SUMMARY OF THE CANNALEX STUDY RESULTS 2 (2017); *but see* Kyle Jaeger, *Where President Donald Trump Stands on Marijuana*, MARIJUANA MOMENT (Sept. 29, 2020), <https://www.marijuanamoment.net/where-president-trump-stands-on-marijuana/>.

12. See Tara Deschamps, *Aphria CEO Eyes U.S. Cannabis Legalization as Biden Prepares to Take Office*, CANADIAN PRESS (Jan. 14, 2021, 11:36 AM), <https://globalnews.ca/news/7576052/aphira-cannabis-legalization-united-states/>; *see also* Kyle Jaeger, *Biden’s Commerce Secretary Pick Wants Marijuana Sold in Government-Run Stores*, MARIJUANA MOMENT (Jan. 8, 2021), <https://www.marijuanamoment.net/bidens-commerce-secretary-pick-wants-marijuana-sold-in-government-run-stores/>.

13. Joseph Stromberg, *The Problem with the NFL’s New Marijuana Policy*, VOX (Sept. 16, 2014, 12:20 PM), <https://www.vox.com/2014/9/16/6154385/nfl-marijuana-policy-drugs>.

14. Mark Maske, *NFL and Player’s Union to Study Potential Use of Marijuana for Pain Management*, WASH. POST (May 20, 2019, 3:00 PM), <https://www.washingtonpost.com/sports/2019/05/20/nfl-players-union-study-potential-use-marijuana-pain-management/>.

15. Ken Belson, *N.F.L. Bows to Marijuana’s New Status*, N.Y. TIMES (Apr. 13, 2020, updated Apr. 16, 2020), <https://www.nytimes.com/2020/04/13/sports/football/nfl-marijuana-policy.html?auth=link-dismiss-google1tap>. Players will no longer be suspended for positive marijuana tests, and will instead be diverted to treatment programs or fined, depending on how many positive tests they have received. *Id.*

eral current and former¹⁶ players acknowledging the health benefits that a relaxed marijuana policy could have in the NFL,¹⁷ most recently highlighted by Rob Gronkowski, a particularly high-profile NFL talent, who briefly retired at the relatively young age of 29 to partner with a CBD company.¹⁸ Additionally, the National Basketball Association announced at the start of the 2020–2021 season that the league’s players would no longer be tested for marijuana.¹⁹

The United States is not alone in this trend towards decriminalization and legalization. In fact, the US is lagging behind some of the efforts implemented across the globe: In 2013, Uruguay was the first country to “remove the prohibition on cannabis supply for nonmedical purposes,” legalizing the drug.²⁰ While relatively recent, this move is consistent with the general attitude Uruguay has exhibited in the past, as *all* drug possession for personal use has been decriminalized since

16. See Katie Shapiro, *5 Former NFL Players Who Have Gotten Into the Cannabis Game*, FORBES (Jan. 31, 2019, 6:04 PM), <https://www.forbes.com/sites/katieshapiro/2019/01/31/5-former-nfl-players-who-gotten-into-the-cannabis-game/#3734350d40ba>. The article highlights five former NFL players who have involved themselves with the cause of expanding marijuana use in athletes for its potential health benefits. *Id.*

17. Bay Area News Group, *Majority of NFL Players Say Medical Marijuana Would Reduce Pain Killer Use, Survey Shows*, CANNABIST (Nov. 3, 2016, updated July 20, 2017, 5:49 PM), <https://www.thecannabist.co/2016/11/03/nfl-marijuana-use-preferred-with-players/66687/>. The article references a survey conducted by ESPN which polled “226 of the league’s nearly 3,000 players on active rosters or practice squads...” *Id.* The survey showed “61 percent in agreement that players would take fewer injections of strong anti-inflammatory drugs such as Toradol if they could treat pain legally with marijuana.” *Id.*

18. *Gronkowski Not Planning Return, Partners with CBD Company*, REUTERS (Aug. 27, 2019, 12:12 PM), <https://www.reuters.com/article/us-football-nfl-gronk/gronkowski-not-planning-return-partners-with-cbd-company-idUSKCN1VH1W4>.

19. Michael Kaskey-Blomain, *NBA Won’t Test Players for Marijuana During 2020-2021 Season*, CBS SPORTS (Dec. 4, 2020, 12:45 PM), <https://www.cbssports.com/nba/news/nba-wont-test-players-for-marijuana-during-2020-21-season/>.

20. Magdalena Cerdá & Beau Kilmer, *Uruguay’s Middle-Ground Approach to Cannabis Legalization*, 42 INT’L J. DRUG POL’Y 118, 118 (2017). This article points out how the approach taken by Uruguay falls between the two approaches generally seen in the United States: prohibition and the commercial model. *Id.*

1974.²¹ Unlike the privatized, revenue generating approach seen in the US, the impetus for Uruguay's system of governmental control are the reduction of the black market, management of public health, and protection of minors.²²

Likewise, the Netherlands has had a long history of leniency with regards to cannabis possession and use, and, like Uruguay, the driving force behind Dutch policy has been pragmatic harm reduction.²³ The Netherlands recognized the need to separate so-called "soft drugs"—like cannabis—from more dangerous "hard drugs."²⁴ In fact, the government amended its "Opium Act" in 1976, distinguishing between the two.²⁵ While possession of these "soft drugs" in "the Netherlands is not statutorily decriminalised; rather, there is a long-standing non-prosecution policy in place, established by written guidelines issued by the Ministry of Justice, which generally instruct prosecutors not to prosecute possession offences of up to 5 grams of cannabis for personal use"²⁶

Portugal faced a health crisis in the 1990s in the form of rampant drug addiction across the nation.²⁷ On the recommendation of a committee of experts, the national government decriminalized *all* drug use and possession, and established

21. JOHN WALSH & GEOFF RAMSEY, URUGUAY'S DRUG POLICY: MAJOR INNOVATIONS, MAJOR CHALLENGES 2 (2016); *see also* ARI ROSMARIN & NIAMH EASTWOOD, A QUIET REVOLUTION: DRUG DECRIMINALISATION POLICIES IN PRACTICE ACROSS THE GLOBE 35 (2011).

22. OBRADOVIC, WEINBERGER, GANDILHON & LALAM, *supra* note 11, at 2. This study was conducted by a multidisciplinary team of the INHESJ (French National Institute for Advanced Studies in Security and Justice) and the OFDT (French Monitoring Center for Drugs and Drug Addiction). *Id.* at 1.

23. STEVE ROLLES, CANNABIS POLICY IN THE NETHERLANDS: MOVING FORWARDS, NOT BACKWARDS 1 (2014), <https://www.unodc.org/documents/ungass2016/Contributions/Civil/Transform-Drug-Policy-Foundation/Cannabis-policy-in-the-Netherlands.pdf>.

24. EUR. MONITORING CENTRE FOR DRUGS AND DRUG ADDICTION, NETHERLANDS COUNTRY DRUG REPORT 2019 2 (2019), <http://www.emcdda.europa.eu/system/files/publications/11347/netherlands-cdr-2019.pdf>.

25. *Id.* at 5.

26. Rosmarin & Eastwood, *supra* note 21, at 28.

27. DRUG POL'Y ALL., DRUG DECRIMINALIZATION IN PORTUGAL: LEARNING FROM A HEALTH AND HUMAN-CENTERED APPROACH 2 (2018), http://www.drugpolicy.org/sites/default/files/dpa-drug-decriminalization-portugal-health-human-centered-approach_0.pdf [hereinafter Drug Alliance].

commissions, which, operating separately from the criminal justice system, aimed to determine the best treatment options for those they deemed to have debilitating addictions.²⁸ In effect, “jail time was replaced with the offer of therapy.”²⁹ The results were immediate and dramatic: overdose deaths, HIV/AIDS cases in drug users, and incarcerations for drug offenses all saw rates decline drastically.³⁰

Potentially the most impactful policy change is also the newest. In 2018, the Canadian government enacted Bill C-45, fully legalizing cannabis.³¹ Bill C-45 allows for legal possession of small amounts of dried cannabis, as well as the purchase and use of cannabis derivatives.³² Additionally, the government will institute strict penalties for the sale of cannabis and cannabis products to minors, the trafficking of cannabis over international borders, and operating a vehicle while under the influence of cannabis.³³

What makes Canada’s entry into the world of legalized cannabis so notable is its status as a G7 nation.³⁴ Narcotic drugs, a designation that currently includes cannabis, are regulated by three international conventions—the 1961 Single Convention on Narcotic Drugs (as amended by the 1972 protocol), the 1971

28. *Id.* at 3–4.

29. Maia Szalavitz, *Drugs in Portugal: Did Decriminalization Work?*, TIME (Apr. 26, 2009), <http://content.time.com/time/health/article/0,8599,1893946,00.html>.

30. Drug Alliance, *supra* note 27, at 6. “overdose deaths decreased by over 80%, drug users accounting for new HIV/AIDS cases fell from 52% to 6%, and incarcerations for drug offenses decreased by over 40%.” *Id.*

31. Bani Sapiro, *Canada Becomes Second Nation in the World to Legalize Marijuana*, CNN (June 20, 2018, 10:55 AM), <https://www.cnn.com/2018/06/20/health/canada-legalizes-marijuana/index.html>.

32. *Cannabis in Canada: What You Need to Know*, GOV’T OF CAN., <https://www.canada.ca/en/health-canada/services/drugs-medication/cannabis/resources/cannabis-act-what-you-need-to-know.html> (last visited April 1, 2021); see also *What you Need to Know About Cannabis*, GOV’T OF CAN., <https://www.canada.ca/en/services/health/campaigns/cannabis/canadians.html#a3> (last visited April 1, 2021).

33. *What you Need to Know about Cannabis*, *supra* note 32.

34. *G7 Countries 2020*, WORLD POPULATION REV. (Oct. 28, 2019), <http://worldpopulationreview.com/countries/g7-countries/>. G7 refers “the Group of Seven”, encompassing the seven of the largest economies in the world. *Id.* The group currently consists of the United States, Japan, Germany, France, Italy, Canada, and the United Kingdom. *Id.*

Convention on Psychotropic Substances, and the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.³⁵ These treaties classify cannabis under Schedule I and Schedule IV, placing it under the strictest of restrictions, requiring criminalization of possession and prohibiting use for anything other than medical or scientific purposes.³⁶ As of November 2017, 185 States had ratified to the 1961 Convention as amended.³⁷

In response to the growing number of signatories operating in direct violation of the Convention's guidelines, the International Narcotics Control Board (INCB) issued a report in 2017 that reaffirmed its commitment to the regulations outlined in the original conventions, and issued "stern warnings" to the countries that were operating in violation of those treaties.³⁸ However, just a year later, the World Health Organization Expert Committee on Drug Dependence (ECDD) issued a news briefing announcing that specially convened sessions had taken place to "evaluate the public health harms and therapeutic value of cannabis and its related substances."³⁹ The ECDD undertook its first-ever evaluation of cannabis to reconsider its scheduling, and came to the conclusion that there was sufficient new information regarding the harms and benefits of cannabis and its related products to warrant a reconsideration of "their current level of international control."⁴⁰

Part I of this Note will outline the three United Nations treaties that collectively establish the framework under which cannabis production, sale, and use is currently regulated across

35. Roojin Habibi & Steven J. Hoffman, *Legalizing Cannabis Violates the UN Drug Control Treaties, But Progressive Countries Like Canada Have Options*, 49 OTTAWA L. REV. 427, 431–32 (2018).

36. Single Convention on Narcotic Drugs, Mar. 30, 1961, 18 U.S.T. 1407, 520 U.N.T.S. 151, *as amended* by the 1972 Protocol Amending the Single Convention on Narcotic Drugs art. 2 ¶1, 2, 5, 7, Mar. 25, 1972, 26 U.S.T. 1439, 976 U.N.T.S. 3 [hereinafter Single Convention].

37. Int'l Narcotics Control Bd., Rep. of the Int'l Narcotics Control Bd. for 2017, at 17, U.N. Doc. E/INCB/2017/1 (Jan. 2018) [hereinafter INCB 2017].

38. Sarah Brittany Somerset, *The United Nations Just Warned Member States to Keep Recreational Cannabis Illegal*, HERB (Mar. 9, 2018), <https://herb.co/news/legalization/united-nations-recreational-cannabis-incb/>.

39. *News Briefing - 40th WHO Expert Committee on Drug Dependence (ECDD)*, WORLD HEALTH ORG. (Sept. 13, 2018), https://www.who.int/medicines/news/2018/news_briefing_ecdd/en/.

40. *Id.*

the globe: the 1961 Single Convention on Narcotic Drugs (amended in 1972); the 1971 Convention on Psychotropic Substances; and the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Part II will discuss the legal history of cannabis within the United States with an eye on the dichotomy of a federal prohibition co-existing with increasing rates of state legalization and the distinctly capitalistic nature of state-lead legalization efforts. Additionally, Part II will highlight the unusually strict penalties imposed for cannabis related offenses prevalent in the United States' justice system. Part III will contrast the legalization and decriminalization efforts taken by the United States with those of other countries who have attempted to broaden access to cannabis for recreational purposes; specifically, recent regulations and legislation from the Netherlands, Canada, Uruguay and Portugal will be highlighted and compared. Finally, Part IV will analyze proposed methods of amending the current Conventions and suggest the most sustainable method for maintaining international compliance in the face of a global rise in efforts to legalize recreational cannabis use while continuing to foster the health and wellbeing of the global populace.

I. A HISTORY OF THE UNITED NATIONS' CONVENTIONS REGARDING ILLICIT DRUGS AND PSYCHOTROPIC SUBSTANCES.

International governance of narcotic drugs⁴¹ is controlled by three United Nations (UN) treaties: The Single Convention on Narcotic Drugs as amended by the 1972 protocol (Single Convention);⁴² the 1971 Convention on Psychotropic Substances (Psychotropic Convention)⁴³; and the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Traffic Convention).⁴⁴ Read together, these three treaties "aim to curtail drug use by requiring [p]arties to criminalize the possession, cultivation, production, importation, sale and distribu-

41. "Drug" is defined in the Single Convention as any of the substances in Schedules I and II, whether natural or synthetic. Single Convention, *supra* note 36, art. 1 (j).

42. *See generally id.*

43. Convention on Psychotropic Substances, Feb. 21, 1971, 32 U.S.T. 543, 1019 U.N.T.S. 175.

44. United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Dec. 20, 1988, 1582 U.N.T.S. 95 [hereinafter Traffic Convention].

tion of illicit drugs for non-medical and non-scientific purposes.”⁴⁵ Per Article 5 of the Single Convention, observations on the compliance of the member states with regards to the provisions of these treaties falls under the purview of the Commission on Narcotic Drugs of the Economic and Social Council (CND) and the International Narcotics Control Board (INCB).⁴⁶ Despite an overwhelming number of countries being signatories to these treaties,⁴⁷ they have nonetheless been subject to growing criticism in the international community for reasons ranging from simply being outdated and out of touch to encouraging human rights violations.⁴⁸

By looking at the circumstances at which these treaties came to be, specifically the Single Convention, it becomes clear that these criticisms were inevitable. A 2002 report by the Senate Special Committee on Illegal Drugs in Canada summarizes this history well in stating that “beyond any moral or even racist roots it may initially have had, [the international drug regime] is first and foremost a system that reflects the geopolitics of North-South relations in the 20th century.”⁴⁹ The initial focus

45. Habibi & Hoffman, *supra* note 35, at 432.

46. Single Convention, *supra* note 36, art. 5.

47. *Status of Treaties: 18. Single Convention on Narcotic Drugs, 1961, as amended by the Protocol amending the Single Convention on Narcotic Drugs, 1961*, UN TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-18&chapter=6&clang=_en#1 (last visited April 1, 2021). As of April 1, 2021, 186 nations were party to the Single Convention; 184 were party to the Psychotropic Convention, and 191 were party to the Traffic Convention. *Id.*

48. Habibi & Hoffman, *supra* note 35, at 432; *see generally* ACLU, *supra* note 1; *see generally* LONDON SCH. OF ECON. AND POL. SCI, AFTER THE DRUG WARS (2016), <http://www.lse.ac.uk/ideas/Assets/Documents/reports/LSE-IDEAS-After-Drug-Wars.pdf>; *see generally* Joanne Csete, Adeeba Kamarulzaman, Michel Kazatchkine, Frederick Altice, Marek Balicki, Julia Buxton, Javier Cepeda, Megan Comfort, Eric Goosby, João Goulão, Carl Hart, Thomas Kerr, Alejandro Madrazo Lajous, Stephen Lewis, Natasha Martin, Daniel Mejía, Adriana Camacho, David Mathieson, Isidore Obot, Adeolu Ogunrombi, Susan Sherman, Jack Stone, Nandini Vallath, Peter Vickerman, Tomáš Zábanský, Chris Beyrer, *Public Health and International Drug Policy*, 387 THE LANCET COMM’NS 1427 (2016).

49. DAVID BEWLEY-TAYLOR, TOM BLICKMAN & MARTIN JELSMA, THE RISE AND DECLINE OF CANNABIS PROHIBITION: THE HISTORY OF CANNABIS IN THE UN DRUG CONTROL SYSTEM AND OPTIONS FOR REFORM: THE HISTORY OF CANNABIS IN THE INTERNATIONAL DRUG CONTROL SYSTEM 5 (2014), https://www.tni.org/files/download/rise_and_decline_ch1.pdf. The report goes on to say that “the strictest controls... which are often part of the ancestral

on the international regulation of drug trade began with an eye primarily towards opium, as any national attempts at regulation were “unworkable without control of international trade.”⁵⁰ These concerns led to the 1912 implementation of the International Opium Convention, the result of a specially convened conference at the Hague.⁵¹ While this convention focused on opium, the conference discussed the subject of cannabis and its inclusion in the convention, though it was ultimately left to countries to deal with internally.⁵²

One of the earliest attempts to study and categorize cannabis came by way of the United Kingdom’s House of Commons, who wished to investigate the effects of cannabis in response to stories coming out of India of asylums for the insane being “filled with ganja smokers.”⁵³ In what may come as a surprise given the current state of cannabis regulation, the resulting *Indian Hemp Drugs Commission Report of 1894* was remarkably moderate in its findings.⁵⁴ The report came to the conclusion

that the moderate use of hemp drugs produces no injurious effects on the mind As a rule these drugs do not tend to crime and violence[, and] moderate use of these drugs is the rule, and the excessive use is comparatively exceptional. The moderate use produces practically no ill effects.⁵⁵

A second conference held by the League of Nations in 1924 at Geneva would change the attitude reflected in both the 1912 Convention and the report of 1894.⁵⁶ Egypt’s delegate, Mohamed El Guindy, proposed that cannabis be included in the scope of the Convention, giving an impassioned speech in which he correlated cannabis use with hysteria and insanity, likened

traditions of the countries where these plants originate[d], whereas the North’s cultural products, tobacco and alcohol, were ignored[.]” *Id.*

50. *Id.* at 9.

51. *Id.*

52. *Id.* at 9, 10. The author here surmises that this was largely due to participants in the conference having “no substantive knowledge, due to lack of statistics. . . or even a clear definition of the substance.” *Id.* at 9. Additionally, delegates who attended the convention were not prepared to discuss cannabis, and thus had no instructions from their governments on how to deal with the issue. *Id.*

53. *Id.* at 5, 7.

54. *Id.* at 7.

55. *Id.*

56. *Id.* at 10.

the danger of cannabis to that of cocaine and opium, and categorized cannabis as “a terrible menace to the whole world.”⁵⁷ Largely unaware of the 1894 report, and uninformed in general about the effects of cannabis use, the delegation was whipped into a “moral panic” by El Guindy, and a subcommittee to the conference recommended cannabis be added to the new Opium Convention of 1925, albeit under limited control that did not speak to internal regulation of cannabis within signatory countries.⁵⁸

Concurrent with the 1925 Geneva convention, attitudes in the United States were beginning to radicalize on the subject of cannabis as well, led largely by Harry J. Anslinger, who would be appointed Commissioner of Narcotics in 1930.⁵⁹ The US, in the midst of its own ineffectual prohibition on alcohol, sought to change federal law to include a prohibition on cannabis use as well and attempted to use international treaties to influence its own domestic regulation.⁶⁰ “The U.S. strategy was to influence its domestic policy, establishing a constitutional basis, via treaty, for federal regulation of the cultivation and production of opium and cannabis.”⁶¹ Anslinger, frustrated on the international front, began a campaign of fear and racial diatribe in the U.S. that “bordered on ridiculous.”⁶² In testimony before a House of Representatives committee, Anslinger claimed that most marijuana smokers were “Negroes, Hispanics, jazz musicians, and entertainers . . .” whose “satanic music is driven by marijuana, and marijuana smoking by white women makes them want to seek sexual relations with Negroes [I]t is a drug that causes insanity, criminality, and death – the most violence-causing drug in the history of the world.”⁶³

57. *Id.*

58. *Id.* at 11–12. The new regime “did not prohibit the production of or domestic trade in cannabis; it did not impose measures to reduce domestic consumption; nor ask governments to provide cannabis production estimates to the Permanent Central Opium Board (PCOB)[.]” *Id.* at 12.

59. *Id.* at 13.

60. *Id.* The United States delegations at both the 1925 Conference in Geneva and a subsequent 1936 Conference for the Suppression of the Illicit Traffic in Dangerous Drugs walked out of deliberations out of frustration that regulations were not as strict as they would have liked. *Id.*

61. *Id.*

62. *Id.* at 14.

63. *Id.* at 13–14. He would go on to claim in front of a League of Nations Advisory Committee in 1938 that “the drug [marihuana] (sic) maintains its

While this viewpoint didn't gain much traction with the League of Nations, despite the efforts of Anslinger and El Guindy, the conclusion of the second World War would introduce the United States as *the* world superpower, thrusting this ideology into the forefront of international politics.⁶⁴ The United Nations and the CND would replace the League of Nations in the aftermath of the war, and with it came the opportunity to rethink international regulation of cannabis, which Anslinger, the US delegate to the UN jumped at.⁶⁵ The newly founded UN Economic and Social Council (ECOSCO) approved a US-drafted and CND-sponsored resolution that called on the UN to draft a new convention which would unify all preexisting, but fragmented, remnants of the 1912 Convention.⁶⁶ The first draft of this proposal contained provisions about cannabis that were "drastic."⁶⁷ Despite his initial efforts, there was no agreement on the proposal, as the council expressed trepidation that "a rigid limitation of the use of drugs . . . does not sufficiently take into consideration long established custom and traditions which persist in particular in territories of the Middle and Far east, and which is impossible to abolish by a simple decree of prohibition."⁶⁸ Instead, it was decided that the medical uses of cannabis needed to be further studied, and the WHO Expert Committee on Drugs Liable to Produce Addiction was placed in

ancient, worldwide tradition of murder, assault, rape, physical and mental deterioration...from the point of view of policing, it is a more dangerous drug than heroin or cocaine." *Id.* at 14.

64. *Id.* at 17.

65. *Id.* at 16.

66. *Id.* at 17.

67. *Id.* at 14, 17. This is no surprise given Anslinger's single-minded focus on painting Cannabis in a poor light. In 1944, the Mayor of New York, Fiorello La Guardia, issued a report based on five years of interdisciplinary research providing a thorough, impartial and scientific analysis of marijuana which concluded, among other things, that marijuana did not lead to addiction, was not a determining factor in major crimes, did not act as a "gateway" to other drugs, and that ultimately, the "publicity concerning the catastrophic effects of marijuana was unfounded." *Id.* at 16-17. Anslinger omitted all references to the La Guardia report when submitting his proposal to the ECOSCO. *Id.* at 17.

68. *Id.* at 18. Hans Halbach, the head of WHO Section on Addition Producing Drugs from 1954 to 1970, would later claim that "If in those days the opium-producing countries had been as concerned about alcohol as Western countries were concerned about opium, we might have had an international convention on alcohol." *Id.*

charge of the research.⁶⁹ Unfortunately for those in favor of measured and empirical studies, Pablo Osvaldo Wolff, described as part of the “inner circle’ of control advocates” was appointed secretary of the committee.⁷⁰ It’s been said that through Wolff’s “cherry picking” of evidence, the power afforded him by his status as Secretary of the WHO Expert Committee, and the backing of the world’s foremost superpower, “Wolff practically unilaterally determined the WHO position during these crucial years.”⁷¹

After deliberations, the CND determined in 1955 that cannabis had no medicinal value, setting the stage for the 1961 Single Convention as it stands today.⁷² The Single Convention, which has been described as the “bedrock of the regime,”⁷³ states in Article 4(c) that “parties shall take such legislative and administrative measures as may be necessary [to] subject to provisions of this Convention, to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs.”⁷⁴ The Single Convention would go on to be amended in 1972, largely to “enhance the INCB’s mandate to prevent the illicit cultivation, production and manufacture of, and illicit trafficking in and use of drugs.”⁷⁵ The Single Convention operates by separating illicit substances into four different Schedules, depending on the perceived danger of the substance in question.⁷⁶ Schedule I drugs are subject to all of the Conventions regulations and considered prone to substantial abuse but with po-

69. *Id.*

70. *Id.* Evidence of Wolff’s bias can be seen in the preface of his booklet *Marijuana in Latin America: The Threat It Constitutes*, which was written by Anslinger and which stated that marijuana “changes thousands of persons into nothing more than human scum...this vice...should be suppressed at any cost. [Cannabis is] an exterminating demon which is now attacking our country.” *Id.* at 18–20.

71. *Id.* at 20.

72. *Id.* at 21.

73. MARTIN JELSMA, NEIL BOISTER, DAVID BEWLEY-TAYLOR, MALGOSIA FITZMAURICE & JOHN WALSH, *BALANCING TREATY STABILITY AND CHANGE: INTER SE MODIFICATION OF THE UN DRUG CONTROL CONVENTIONS TO FACILITATE CANNABIS REGULATION* 3 (2018), https://www.tni.org/files/publication-downloads/balancing_treaty_stability_and_change.pdf.

74. Single Convention, *supra* note 36, art. 4(c).

75. Habibi & Hoffman, *supra* note 35, at 437.

76. Single Convention, *supra* note 36, at Schedules.

tential therapeutic value, while Schedule IV is a subset of Schedule I that singles out drugs considered “particularly dangerous” with no perceived therapeutic value.⁷⁷ Given the history of misinformation and fearmongering that went into the creation of the Single Convention, it is no wonder that the Scheduling held within it has been subject to much scrutiny and criticism.⁷⁸ Additionally, while Cannabis is scheduled under the Single Convention, tetrahydrocannabinol (THC) is scheduled under the 1971 Psychotropic Convention,⁷⁹ meaning that more than an amendment or re-scheduling of the Single Convention alone would be needed to effectively impact the status of cannabis as a Schedule 1 drug.

Problems arise for member states who have issue with the scheduling of cannabis in these conventions, as the Articles are written in such a way to make substantive change quite difficult.⁸⁰ Per Article 47 of the Single Convention, any party may propose an amendment to the convention by submitting it in writing to the Secretary General, who will then notify all member parties and ECOSOC.⁸¹ ECOSOC then decides whether to call a conference to consider the amendment or put it to the rest of the member parties.⁸² If any single party objects, they must lodge that objection within eighteen months of the amendment proposal, triggering ECOSOC to decide whether or not to hold a conference on the amendment among the member states.⁸³

77. Antonia Eliason & Robert Howse, *A Higher Authority: Canada's Cannabis Legalization in the Context of International Law*, 40 MICH. J. INT. L. 327, 337 (2019); see also Single Convention, *supra* note 36, at Schedules. Cannabis and cannabis resin are defined under both Schedule I and IV. *Id.* art. 1(b), 1(d).

78. See generally Eliason & Howse, *supra* note 77; see generally Habibi & Hoffman, *supra* note 35; BEWLEY-TAYLOR ET AL., *supra* note 49.

79. Eliason & Howse, *supra* note 77, at 337; see also Habibi & Hoffman, *supra* note 35, at 437. The Psychotropic Convention was the result largely of the onset of synthetic drugs into the market, as opposed to drugs resulting from plants such as the cocoa leaf, cannabis, or poppy. *Id.*

80. See Single Convention, *supra* note 36, art. 47.

81. *Id.*

82. *Id.*

83. *Id.* To date, Bolivia is the only country that has proposed an Amendment. Habibi & Hoffman, *supra* note 35, at 451. In 2009 they, attempted to remove the obligation to prohibit the chewing of coca leaf. *Id.* Their attempt was blocked by eighteen parties. *Id.*

Difficulty in the amendment process has forced multiple countries who take issue with the Single Convention's strict approach to marijuana to adopt their own models of cannabis regulation, seemingly in violation of the Single Convention's established standards.⁸⁴ In 2017, the INCB issued a report in response to a 2016 United Nations General Assembly Special Session (UNGASS) on the World Drug Problem specifically outlining the separate initiatives that member states around the world have implemented to distance themselves from the restrictions of the Single Convention.⁸⁵ While the INCB could have used this as an opportunity to find common ground with many of the member states, they instead reaffirmed a strict adherence to the provisions of the Single Convention as written.⁸⁶

II. THE LEGAL TREATMENT OF CANNABIS WITHIN THE UNITED STATES

Up until 1970, US federal law on narcotics was a “statutory and administrative mess;”⁸⁷ the result of “ad hoc legislation, sometimes based on the constitution’s taxing power and sometimes on its commerce power [that] had produced a patchwork of enforcement agencies with different priorities and resources.”⁸⁸ Richard Nixon was convinced that narcotic use was directly responsible for a rise in crime, which was the “No. 1 domestic issue in his 1968 campaign,”⁸⁹ crucial to his administration. In 1970, the Nixon administration passed the Com-

84. *See generally* INCB 2017, *supra* note 37.

85. *See generally* *Id.*

86. *Id.* at 35–36; *see also* Somerset, *supra* note 38. The report specifically calls out Uruguay as “acting in clear violation” of the treaties, while also “reminding” Jamaica that cannabis uses for “any other purposes, including religious, is not permitted,” in response to Jamaica legalizing cannabis use for religious use in 2015. INCB 2017, *supra* note 37, at 36. The Report also targets the various states of the United States who have decriminalized or legalized marijuana for recreational use, as well as the Netherlands, Canada and others. *Id.*

87. David T. Courtwright, *The Controlled Substances Act: How a “Big Tent” Reform Became a Punitive Drug Law*, 76 *Drug and Alcohol Dependence* 9, 10 (2004).

88. *Id.* Then Attorney General John Mitchell spoke to Congress, asking to “meld the existing legislation with ‘innovations reflecting current levels of knowledge’ to produce ‘one body of organic law[.]’” *Id.*

89. *Id.* at 11.

prehensive Drug Abuse Prevention and Control Act, Title II of which included the Controlled Substances Act (CSA).⁹⁰ Like the Single Convention, the CSA categorized various narcotic drugs into schedules according to their potential for abuse and lack of potential for any medical use; the most dangerous drugs were relegated to Schedule 1.⁹¹ Congress temporarily placed cannabis in Schedule 1, noting a lack of scientific data, and proposed further research on the plant.⁹² To collect said data, Nixon appointed the National Commission on Marijuana and Drug Abuse, which would ultimately return a report disfavoring cannabis prohibition, recommending decriminalization of cannabis possession in small amounts and removal of cannabis from Schedule 1.⁹³ These findings did not fit Nixon's prohibitionist attitude, and as such, he ignored them.⁹⁴

The reports nonetheless had an effect because while the United States was imposing a prohibitionist policy internationally, "the federal government had major difficulties in maintaining its policy domestically," with several states enacting—or attempting to enact⁹⁵—their own cannabis measures in the 1970s.⁹⁶ These early efforts, coupled with the 1970s "perfect storm of teenage population boom, flourishing counterculture, and expanded illicit supply . . ."⁹⁷ of drugs generated tremendous anxiety among the middle-class suburbanites and religious conservatives who had elected Nixon, prompting him to declare drugs "public enemy number one."⁹⁸ In part due to a "fearful, intolerant, and morally polarized climate which favored simplicity and strictness,"⁹⁹ America elected Ronald

90. ACLU, *supra* note 1, at 86; *see generally* 21 U.S.C. § 811.

91. *See* ACLU, *supra* note 1, at 86.

92. *Id.*

93. *Id.* at 87. The following year, another report – *Drug Use in America: Problem in Perspective* – came to the same conclusions and favored decriminalization. *Id.*

94. *Id.*; *see also* BEWLEY-TAYLOR ET AL., *supra* note 49, at 24.

95. BEWLEY-TAYLOR ET AL., *supra* note 49, at 24.

96. *Id.* Oregon decriminalized cannabis in 1973, becoming the first state to do so. *Id.* Various other states followed with fines, education, and treatment plans replacing incarceration in multiple instances. *Id.* The Alaska supreme court went as far as to declare it against the privacy protections within the State Constitution to criminalize possession of cannabis amounts of up to one ounce in your own home. *Id.*

97. Courtwright, *supra* note 87, at 13.

98. ACLU, *supra* note 1, at 87.

99. Courtwright, *supra* note 87, at 13.

Reagan in 1981, who pushed the prohibitionist ideals of Nixon to even greater heights.¹⁰⁰ Reagan passed the Anti-Drug Abuse Act of 1986 which focused an additional \$1.7 billion to the “war on drugs” and imposed minimum sentences for those convicted of certain drug offenses.¹⁰¹ These “draconian”¹⁰² policies would define the federal stance of the United States for the next several decades.¹⁰³

The 1990s and early 2000s saw several states enact their own measures to soften federal regulation on cannabis, almost exclusively in the form of medical marijuana laws.¹⁰⁴ These early laws were met with some uncertainty and hesitation, and fed-

100. See BEWLEY-TAYLOR ET AL., *supra* note 49, at 25. Jimmy Carter opposed Regan in 1981 and ran on a platform that was critical of the criminalization of cannabis. *Id.* Unlike Nixon, he acknowledged the initial report from the Commission on Marijuana and explained to Congress “penalties against possession of a drug should not be more damaging to an individual than the use of the drug itself; and where they are, they should be changed. Nowhere is this more clear than in the laws against possession of marijuana in private and personal use.” *Id.* Carter would of course be defeated, and Reagan’s administration would go on to “[re-initiate] Nixon’s war on drugs.” *Id.*

101. ACLU, *supra* note 1, at 88.

102. *Id.*

103. *Id.* at 89–93. Both George H. W. Bush and Bill Clinton fostered aggressive drug policies, with drug arrests rising forty-six percent over Clinton’s presidency. *Id.* at 89. The 1990s also saw the institution of the “broken windows” policies, which dictated an emphasis on misdemeanor and minor offenses, with the thought that stopping those would prevent violent crime down the road. *Id.* at 91. This policy was most evident in places like New York City, which saw increases in street stops, frisks, and searches. *Id.* at 93. For example, in 1991 the NYPD made 774 marijuana arrests. *Id.* at 94. In 1995, a year after Mayor Rudy Giuliani publicly advocated for a zero-tolerance policy for minor drug offenses, marijuana arrests rose to 5,716. *Id.* By 2010, that number had ballooned to a staggering 59,000. *Id.*

104. See generally *California Proposition 215, the Medical Marijuana Initiative* (1996), BALLOTPEDIA, [https://ballotpedia.org/California_Proposition_215_the_Medical_Marijuana_Initiative_\(1996\)](https://ballotpedia.org/California_Proposition_215_the_Medical_Marijuana_Initiative_(1996)) (last visited April 1, 2021); see also Rosalie Liccardo Pacula & Rosanna Smart, *Medical Marijuana and Marijuana Legalization*, 13 ANN. REV. CLINICAL PSYCHOL. 397, 6,7 (2017). In 1996, California became the first state to pass a medical marijuana law in the form of Proposition 215 (Compassionate Use Act), which exempt patients and caregivers from criminal punishments. *Id.* at 6. Additionally, Hawaii became the first state to pass medical marijuana laws through legislation as opposed to ballot initiative in 2000. *Id.* at 7. Washington State legalized medical marijuana in 1998, and Colorado followed suit in 2000. OBRADOVIC, WEINBERGER, GANDILHON & LALAM, *supra* note 11, at 2.

eral opposition was clear from the start.¹⁰⁵ “The threat of federal enforcement created an important barrier to establishing clearly defined legal access to medical marijuana,” and as a result many of these early initiatives were vague as to their specifics and definitions in an effort to afford them flexibility in the event of a federal response.¹⁰⁶ It was not until 2009 that the federal government explicitly declared its intentions with regards to growing state-led cannabis regulations.¹⁰⁷ Under the administration of President Barack Obama, then-Attorney General Eric Holder issued a statement declaring that federal authorities “would cease interfering with medical marijuana dispensaries operating in compliance with state law.”¹⁰⁸ Clarifying the official stance of the federal government allowed medical marijuana laws to expand their reach.¹⁰⁹

In the decade that followed Holder’s statement, a flurry of state legislation was passed that not only regulates medical marijuana, but decriminalizes and legalizes recreational marijuana use, as well.¹¹⁰ As of January 2021, fifteen states have legalized small amounts of marijuana for adult recreational use, twenty-seven states have decriminalized small amounts of

105. Pacula & Smart, *supra* note 104, at 6. Immediately after the passing of Proposition 215, “drug czar Barry McCaffrey threatened to arrest any physician who recommended cannabis to a patient.” *Id.* Though ultimately, many of these state initiatives were held as valid by federal government. *Id.* at 8.

106. *Id.*

107. *Id.* at 8.

108. *Id.* This declaration was formalized in a memo by Deputy Attorney General David Ogden in a memo which stated that federal prosecutors “should not focus federal resources...on individuals who are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana.” *Id.*; see also JELSMA ET AL., *supra* note 73, at 8 (The Obama Administration would double down on this sentiment in 2013 in the Justice Department’s Cole Memo, which stated a “variety of legal, political, and practical reasons - the federal government would find it very difficult to impede the states from moving ahead with cannabis regulation.”).

109. JELSMA ET AL., *supra* note 73, at 8.

110. See generally *Marijuana Overview*, *supra* note 6.; see also DAVID BEWLEY-TAYLOR, TOM BLICKMAN & MARTIN JELSMA, THE RISE AND DECLINE OF CANNABIS PROHIBITION: THE HISTORY OF CANNABIS IN THE UN DRUG CONTROL SYSTEM AND OPTIONS FOR REFORM: CANNABIS REFORMS: THE SCOPE AND LIMIT OF TREATY LATITUDE, 14 (2014), https://www.tni.org/files/download/rise_and_decline_ch3.pdf. The 2012 initiatives of Colorado and Washington State were the first efforts in the world, along with Uruguay, to establish a legally taxed and regulated market for the production, use and sale of cannabis. *Id.*

marijuana, an additional sixteen states have reduced criminal penalties on marijuana convictions, and fifteen states have passed laws which would expunge certain marijuana related convictions.¹¹¹ Evidence suggests that rapid normalization of commercial legalization has “significantly reduced perceived harm and disapproval of marijuana use”¹¹² This is further evidenced by the fact that in 2018, then-Attorney General Jeff Sessions rescinded the tolerant policies of the Obama administration, but was “immediately challenged by federal and state officials,”¹¹³ which led President Trump to direct the Department of Justice “to abandon its broad threats of federal prosecution.” While these initiatives are clearly in contravention of both the CSA and the UN Conventions, “clear majorities in the referenda and the shift in opinion polls are an important signal for politicians in the US that cracking down on cannabis will no longer be popular.”¹¹⁴

111. *See generally Marijuana Overview*, *supra* note 6. Additionally, in 2018, bills passed before the state legislatures of California, Alaska, Georgia, Iowa, Massachusetts, Michigan, New Jersey and Pennsylvania all of which urged action on the part of the federal government, ranging from urging Congress to reschedule cannabis under the CSA to allowing financial institutions to provide services to the cannabis industry *Id.* at 2; *see also* Lopez, *supra* note 8.

112. Pacula & Smart, *supra* note 104, at 16 (referencing studies from Colorado and Washington State); *see also* BEAU KILMER, KRISTY KRUIHOF, MAFALDA PARDAL, JONATHAN P. CAULKINS & JENNIFER RUBIN, MULTINATIONAL OVERVIEW OF CANNABIS PRODUCTION REGIMES, 25–26 (2013), https://www.rand.org/content/dam/rand/pubs/research_reports/RR500/RR510/RAND_RR510.pdf (the chart presented show the results of a Gallup Poll which asked, “do you think marijuana should be legal?” The results suggest that, as of 2013, fifty-eight percent of Americans polled believed that Marijuana should be legalized, while only twenty-five percent of people 1995 held that belief.).

113. William C. Tilburg, James G. Hodge, Jr. & Camille Gourdet, *Emerging Public Health Law and Policy Issues Concerning State Medical Cannabis Programs*, 47 J. L., MED. & ETHICS 108, 108 (2019). Jeff Sessions went on to resign from his position as Attorney General, which may suggest a further distancing from his “get tough” policy. *Id.*

114. BEWLEY-TAYLOR, BLICKMAN & JELSMA, *supra* note 110, at 15. A 2013 poll showed for the first time a majority of Americans (fifty-eight percent) being in favor of legalizing and regulating cannabis. *Id.* As of 1969, only twelve percent of the population shared this opinion. *Id.*

III. A DEEPER LOOK AT INTERNATIONAL EFFORTS TO CIRCUMVENT THE U.N. CONVENTIONS AND REGULATE CANNABIS

The unique interplay between a prohibitionist federal system and semi-sovereign states has caused the United States to only recently grapple with the hurdles and consequences of cannabis regulation within its borders. Other countries, however, have been tackling the issue for decades and in a wide variety of ways that are worth exploring.

A. Uruguay

Uruguay is unique amongst the signatories of the UN Conventions in that it has never criminalized the possession or personal use of any drug.¹¹⁵ This is generally in line with the long history of social and political progressivism exhibited by the Uruguayan government.¹¹⁶ While personal use and possession of cannabis was allowed, cultivation was still subject to heavy penalties, which generated a substantial black-market supply chain to meet the demand that decriminalization had fostered.¹¹⁷ A growing black market, along with the dangers associated with organized crime and the damage to the populace that the illegal supply chain of drugs was causing, placed pressure on the government to institute policies that increasingly looked at harm reduction as an outcome and combatted the growth of the illicit market.¹¹⁸ In 2013, President Mujica

115. See Rosmarin & Eastwood, *supra* note 21, at 35. While it was always policy, this principle was formally codified in 1974. *Id.* The law at the time allowed for possession of a “reasonable quantity exclusively destined for personal consumption,” as determined by a judge” without risk of any punishment – criminal or administrative. *Id.*

116. See Walsh & Ramsey, *supra* note 21, at 2. Uruguay was the first Latin American to extend voting rights to women in 1927, has since decriminalized abortion, and became the first Latin American country to legalize same-sex civil unions. *Id.*

117. See *id.* at 3. Along with cannabis, these black-market dealers generated an influx of harder, more dangerous drugs. *Id.* at 2-4. Specifically, a drug known as *pasta base* was rapidly becoming a problem amongst the Uruguayan population, drawing parallels to the crack-cocaine epidemic that plagued the United States throughout the 1980s and 1990s. *Id.*

118. *Id.* at 4. This is a major difference between Uruguay’s rationale behind drug regulation and the United States: The system that Uruguay has put into place removes the focus for potential economic incentives and tax boosts from a coveted product, and instead puts the focus on maximizing social ben-

pushed forward Law 19.172,¹¹⁹ which would legalize limited home cultivation of cannabis.¹²⁰ The law has three major provisions: (1) individuals can purchase up to 40 grams of cannabis from licensed pharmacies which are supplied by state approved commercial growers; (2) users can grow up to six flowering plants for personal use; and (3) users can join cooperative—cannabis clubs—to grow plants collectively, subject to some restrictions.¹²¹

What is perhaps most noteworthy about Uruguay's unorthodox method for cannabis regulation is that, unlike the state laws in the United States—or seemingly anywhere else, for that matter—Law 19.172 was passed not as the result of public pressure or popular opinion, but “in spite of it.”¹²² Thus far, the population's hesitations have been somewhat validated, in that the law has initially struggled to serve its purpose, given the complexity of building this three-part system from scratch.¹²³ Regardless of initial inefficiencies, as the first country to set up a national policy of legalization of cannabis, Uruguay has seemingly subverted its obligations under international law.¹²⁴

efits via “reduction in the black market, the consolidation of public health, user security and protection of minors.” OBRADOVIC, WEINBERGER, GANDILHON & LALAM, *supra* note 11, at 2.

119. INCB 2017, *supra* note 37, at 36.; *see also* Walsh & Ramsey, *supra* note 21, at 2.

120. KILMER, KRUTHOF, PARDAL, CAULKINS & RUBIN, *supra* note 112, at xi.; *see also* Cerdá & Kilmer, *supra* note 20, at 118. The underlying purpose of the new law would be to “(1) address insecurity and reduce users' exposure to more harmful drugs; (2) fix hypocrisy in the existing legal framework to enable users to grow the drug; and (3) improve public health by increasing access to medicinal cannabis.” Walsh & Ramsey, *supra* note 21, at 6.

121. Walsh & Ramsey, *supra* note 21, at 7.

122. Cerdá & Kilmer, *supra* note 20, at 118.; *see also* OBRADOVIC, WEINBERGER, GANDILHON & LALAM, *supra* note 11, at 2; *see also* Walsh & Ramsey, *supra* note 21, at 6 (“Seven consecutive CIFRA polls conducted from late 2012 to mid-2014 repeatedly found that between 61 and 66 percent of the country opposed the law, and other pollsters found similar results.”).

123. Cerdá & Kilmer, *supra* note 20, at 118. As of 2017, only two suppliers had been licensed by the State to supply the pharmacies, which hardly is enough to meet the demand of the population. *Id.* As such, the illicit market has been affected little as of yet. *Id.* Likewise, the cannabis cooperatives have found hardship finding their footing due to difficulties like “complying with regulations, financial sustainability, theft, and a high degree of variation in crop yield.” *Id.*

124. JELSMA ET AL., *supra* note 73, at 11; *see also* BEWLEY-TAYLOR, BLICKMAN & JELSMA *supra*, note 110, at 20 (When he learned of Uruguay's intentions,

Thus, it is “significant” then that Uruguay “has justified its reform with reference to its overarching human rights obligations under international law[,]”¹²⁵ as this is an argument that has been posed by other countries wishing to enact their own regulations that would normally fly in the face of the U.N. conventions.

B. The Netherlands

As mentioned above, the Netherlands is another country with a long tradition of relaxed cannabis laws. The 1976 revision of the Opium Act, which separated “hard” from “soft” drugs, and the resulting codification of the decriminalization of cannabis, was the result of two major factors: “The advent of heroin and . . . the de-stigmatization of cannabis use.”¹²⁶ Additionally, evidence suggests that while the Netherlands always had a mind to “remove the use of cannabis from the domain of criminal justice altogether, there was also an appreciation of the limitations imposed by the treaty framework,” and thus it took only lenient measures that it perceived as staying within the bounds of the convention’s legal parameters.¹²⁷

The separation of “soft” from “hard” drugs and the governmental leniency towards cannabis has resulted in the prevalence of the cannabis “coffee shops” for which the Netherlands

INCB President Raymond Yans denounced the plan stating, “A chain is no stronger than its weakest link. If the chain of drug control is broken in one country or region – and I am thinking now of certain projects in Uruguay – the entire international drug control system may be undermined.”).

125. JELSMA ET AL., *supra* note 73, at 11.

126. DIRK J. KORF, CANNABIS REGULATION IN EUROPE: COUNTRY REPORT NETHERLANDS, 3 (2019), https://www.tni.org/files/publication-downloads/cr_ned_def.pdf (“Gradually [cannabis use] was seen as a symptom of social pathology,” and the idea of cannabis users as delinquents began to wane. In fact, the Dutch began to perceive cannabis use as “non-conformist behaviour, a collective protest of a new subculture against dominant social structures.”).

127. DAVID BEWLEY-TAYLOR, TOM BLICKMAN & MARTIN JELSMA, THE RISE AND DECLINE OF CANNABIS PROHIBITION: THE HISTORY OF CANNABIS IN THE UN DRUG CONTROL SYSTEM AND OPTIONS FOR REFORM: INTRODUCTION AND SUMMARY 6 (2014), https://www.tni.org/files/download/rise_and_decline_intro.pdf. This could explain why they, as a country, have gone to such lengths to allow the possession and use of marijuana without ever entertaining the prospect of legalizing it.

is particularly well known.¹²⁸ These coffee shops are tolerated so long as they adhere to enumerated guidelines, the AHOJ-G criteria, set out by the government,¹²⁹ which exist to ensure that they remain a mutually beneficial, non-obtrusive aspect of society. Regulation and oversight of these coffee shops is almost entirely taken on by municipalities, local police, and tax authorities, with the mayor, public prosecutor, and chief of police usually deciding on the enforcement actions.¹³⁰ Yet even when in compliance with the enumerated guidelines, these coffee shops present a problem: they are all supplied illegally through the “back door”, as cannabis transactions are technically prohibited by statute.¹³¹ Much of the recent political focus on cannabis policy in the Netherlands has dealt with trying to tackle the issue of the illegal supply chain that keeps these coffee shops stocked, with varying degrees of success.¹³²

In 2009, a national expert advisory committee on drug policy advanced the theory that coffee shops should downsize, essentially becoming private clubs with a “residence criterion.”¹³³ Presumably, by making the shops cater to a much smaller, more select crowd, the demand for product would lessen, and

128. ROLLES, *supra* note 23, at 1.

129. *See generally Tolerant Policy Regarding Soft Drugs and Coffee Shops*, GOV'T NETH., <https://www.government.nl/topics/drugs/tolerant-policy-regarding-soft-drugs-and-coffee-shops>. (last visited April 1, 2021). These guidelines establish that coffee shops must not cause any nuisance; sell any “hard” drugs; sell cannabis to minors; advertise drugs; or sell large quantities of cannabis in a single transaction (excess of five grams of cannabis). *Id.*; *see also* KORF, *supra* note 126, at 5.

130. KORF, *supra* note 126, at 6.

131. *See generally* Matthew Leydon, *Front Door/Back Door: The Paradox of the Netherlands' Cannabis Policy*, TALKING DRUGS (Aug. 13, 2014), <https://www.talkingdrugs.org/netherlands-paradox-cannabis-policy-front-door>. The Netherlands particular policy of nonenforcement with regards to cannabis prohibitions generates the problem of relying on organized crime; without a state regulated supply line, coffee shops are forced to rely on the black market to remain stocked. *Id.* This problem mirrors the one faced by Uruguay given the decriminalization of the use and possession of cannabis without providing a legal supply chain to potential users. *See generally* Walsh & Ramsey, *supra* note 21.

132. Korf, *supra* note 126, at 9.

133. *Id.* at 7. Essentially, coffee shops would only sell to members, and only residents could gain membership. *Id.* at 7–8. The idea behind this reform was to make coffee shops smaller and easier to manage. *Id.* at 8; *see also* Rosmarin & Eastwood, *supra* note 21, at 28.

the illicit market supplying the shops would shrink.¹³⁴ The government enacted this plan on a trial basis in 2012; however, the initiative had the opposite effect, and the program was shut down in less than a year.¹³⁵ But the problem of the “back door” persisted: the government was still faced with a system that was necessarily supplied by organized crime.

In an attempt to “close” the “back door,” the Dutch parliament voted for the Closed Coffeeshop Circuit Act in 2017, which stated that “professions or commercial cannabis growers operating under strict conditions can be exempted from prosecution.”¹³⁶ Six to ten municipalities will volunteer to participate in this experiment, where coffee shops in said municipalities would be supplied exclusively by domestically grown, regulated cannabis, the idea being to eliminate the illicit market all together.¹³⁷ The experiment is in its preliminary stages and should begin in earnest at some point next year, with the potential to last a maximum of six years.¹³⁸ There are potential problems with the experiment, however. The Dutch have a history of dancing around the edges of their international obligations while maintaining a fairly good argument as to why they are not in violation.¹³⁹ Crossing the threshold into a state-run cultivation operation would be much harder to justify under the current treaties.¹⁴⁰

134. Korf, *supra* note 126, at 8.

135. *Id.* The government misjudged how willing the populace would be to sign up for newly members only coffee shops. *Id.* Coffee shops lost almost all of their customers, but the demand remained high, so cannabis users turned to the illicit market to supply their needs, substantially increasing the criminal market share. *Id.*

136. *Id.* at 12. It should be noted that this Act passed by the slimmest of margins (seventy-seven to seventy-three). *Id.* Sixty municipalities signed the manifest and called for local experiments in regulated cannabis cultivation. *Id.*

137. *Id.* A multifaceted advisory committee consisting of experts in public health, addiction, surveillance, law enforcement, local administration, criminology and law was established to set the terms of the experiment and to analyze the results as well. *Id.* The committee insisted on a diverse selection of cannabis to be produced by these new domestic growers and a reiteration on their part that just because the government was sanctioning and regulating the growth and sale of the product, did not mean it was necessarily correct. *Id.* at 13.

138. *Id.* at 15.

139. *See generally id.*

140. *See generally id.*

C. Portugal

Portugal was hit with a wave of drug addiction and drug related HIV infections among its populace in the 1990s.¹⁴¹ In fact, “[i]n 1999, Portugal had the highest rate of drug-related AIDS in the European Union, the second highest prevalence of HIV among people who inject drugs, and drug overdose deaths were rapidly increasing.”¹⁴² Recognizing the dire situation that the country was in, the Prime Minister commissioned a committee of diverse experts to analyze possible solutions to the problem.¹⁴³ On the committee’s recommendation, the national government passed Law 30/2000, which both decriminalized *all* drug use and possession “of up to 10 days’ supply of drugs for personal use,”¹⁴⁴ and set up Drug Addiction Dissuasion Commissions, which, operating “independently from the criminal justice system[,]” would evaluate each case presented to them individually to establish the best treatment options for those they deemed to have debilitating addictions.¹⁴⁵

While there have been some efforts to discredit the effectiveness of Portugal’s approach to drug regulation, others suggest that the program has been a “resounding success.”¹⁴⁶ Figures suggest that Portugal’s overall drug use sits below the Europe-

141. Drug Alliance, *supra* note 27, at 3.

142. *Id.* at 2.

143. *Id.* at 3

144. Paula Vale de Andrade & Ludmila Carapinha, *Drug Decriminalisation in Portugal*, 341 *BMJ* 1, 1 (2010).; *see also* Drug Alliance, *supra* note 27, at 4. The trafficking and sale of drugs is still criminalized in Portugal and punishable by between one and twenty-five years in prison, depending on the circumstances surrounding the sale. Persons found to be selling drugs to finance their own addiction are given more lenient sentences. *Id.*

145. Drug Alliance, *supra* note 27, at 4; *see also* Alexander Henderson, *Portuguese Defiance: Analyzing the Strenuous Relationship between Drug Decriminalization and International Law*, 24 *MICH. ST. INT’L L. REV.* 725, 742 (2016). These commissions are made up of three individuals: “One person ‘must be a legal expert appointed by the Ministry of Justice;’ the other two, which may come “from the fields of medicine, psychology, sociology, social services, or other related areas where expertise in drug addiction may be found” are appointed by the Ministry of Health. A therapist of the offenders choosing also takes part in the proceedings.” *Id.* at 742–43. The sanctions imposed by the commissions include “requiring treatment for those who are drug-dependent, requiring regular reporting to the panel, mandating community service, suspending a driver’s license or other licenses, or, as a last resort, issuing fines.” Rosmarin & Eastwood, *supra* note 21, at 30.

146. Rosmarin & Eastwood, *supra* note 21, at 31.

an average, and that there has been a noticeable drop-off in usage amongst the “particularly vulnerable groups”—youth, and dependent users.¹⁴⁷ Perhaps most notably, the largest effects of this change in policy can be seen in Portugal’s “public health arena,” where greatly increased numbers of drug addicted users seeking treatment have led to marked decreases in HIV and tuberculosis transmissions,¹⁴⁸ as well as a dramatic decrease in overdose related deaths.¹⁴⁹

The INCB first had a chance to respond to Law 30/2000 in their 2001 report, which came out against Portugal’s new policy.¹⁵⁰ However, the INCB changed their tune in their 2004 report, cautiously accepting that “the practice of exempting small quantities of drugs from criminal prosecution is consistent with the international drug control treaties”¹⁵¹ The INCB would go on to “fully embrace” the policy in 2012, as drug use remained prohibited, the policy was “clearly defined and is implemented through a comprehensive national plan,” and Portugal remains “committed to the objectives of the [drug control]

147. *Id.* Usage rates of cannabis in particular amongst 15-24-year-olds in Portugal are some of the lowest in Western Europe, with evidence suggesting declining rates of usage of “hard drugs”, such as heroin, among this group as well. *Id.*; see also Henderson, *supra* note 145, at 744 (“In almost every category of drug, and for drug usage overall, the lifetime prevalence rates in the pre-decriminalization era of the 1990s were *higher* than the post-decriminalization rates.”).

148. Rosmarin & Eastwood, *supra* note 21, at 31.

149. Drug Alliance, *supra* note 27, at 6. Figures suggest that between 1999 and 2015, overdose deaths plummeted eighty percent. *Id.* In 2015, “Portugal’s drug-induced mortality rate was 5.8 deaths per million . . . [well below the] European average of 20.3 deaths per million.” *Id.*

150. Int’l Narcotics Control Bd, Rep. of the Int’l Narcotics Control Bd. for 2001, at 74, U.N. Doc. E/INCB/2001/1 (2001) (“The Board would like to remind States that article 3, paragraph 2, of the 1988 Convention requires each party to that Convention to establish as a criminal offence under its domestic law, when committed intentionally, the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption contrary to the provisions of the 1961 Convention, the 1961 Convention as amended by the 1972 Protocol, or the 1971 Convention”); see also BEWLEY-TAYLOR, BLICKMAN & JELSMA, *supra* note 110, at 9; see also Henderson, *supra* note 145, at 755.

151. Int’l Narcotics Control Bd., Rep. of the Int’l Narcotics Control Bd. for 2004, at 80, U.N. Doc. E/INCB/2004/1 (2005); see also BEWLEY-TAYLOR, BLICKMAN & JELSMA, *supra* note 110, at 9; see also Henderson, *supra* note 145, at 756.

treaties.”¹⁵² The decriminalization of drugs is not mentioned in any meaningful way in the entirety of the INCB 2017 report, leading to the assumption that they believe it remains in compliance with treaty obligations.¹⁵³

D. Canada

The most recent country to make significant steps towards decriminalization of cannabis is Canada. In 2017, Canadian Prime minister Justin Trudeau, acting on a campaign promise, “assembled a task force . . .” to draft legislation that would legalize cannabis in Canada.¹⁵⁴ Introduced in April of 2017 and enacted in October of 2018, Bill C-45 made Canada the first G7 country in the world to fully legalize cannabis.¹⁵⁵ C-45, colloquially known as the Cannabis Act, allows for legal possession of up to 30 grams of dried cannabis, and purchase and use of edible cannabis, cannabis extracts, and topical cannabis.¹⁵⁶ The government retains strict penalties for the sale of cannabis and cannabis products to minors, the trafficking of cannabis over international borders, and operating a vehicle while under the influence of cannabis.¹⁵⁷

Canada’s early history with cannabis regulation is not entirely dissimilar with the United States’ in that the inclusion of cannabis in the 1923 Opium and Drug Act was likely the result of misinformation and hysteria; it was “in a climate of irrational fear that criminal sanctions against marijuana were enacted.”¹⁵⁸ Like elsewhere in the world however, the “counter-culture revolution” of the 1960s saw a sharp increase in drug usage in Canada, which was of course accompanied by a steep

152. See Henderson, *supra* note 145, at 756.

153. See generally INCB 2017, *supra* note 37.

154. Russell Bennett, *Canada’s Cannabis Act: Annotation & Commentary*, LexisNexis Canada Inc. 2019, 14.

155. Sapro, *supra* note 31.

156. *Cannabis in Canada: What You Need to Know*, *supra* note 32.

157. *Id.*

158. Bennett, *supra* note 154, at 4, 5. In fact, the Opium Act itself was likely a product xenophobic attitudes towards the Chinese at the time. *Id.* A 2002 Senate Special Committee suggested that the “opium prohibition was the solution to the 1907 riot against Chinese Canadians that occurred in Vancouver” resulting from, in part, “religious morality that denounced smoking opium as incompatible with a ‘Christian nation’ and an intolerance for Chinese immigration.” *Id.*

rise in drug related arrests and incarcerations.¹⁵⁹ The growing burden on the criminal justice system prompted Prime Minister Pierre Trudeau—the father of the current prime minister—and the Minister of Health to establish a commission, known as the Le Dain Commission, for the purposes of officially investigating the non-medical uses of cannabis over the period of 1969 to 1973.¹⁶⁰ The Commission's majority opinion was that the "concept of harm" was central in evaluating any adverse effects cannabis had on society, and that the harm induced by the excessive penalties on cannabis users seemed to outweigh the harms imposed by the drug itself.¹⁶¹ As such, the commission recommended that, in part, the prohibition against both simple possession and personal cultivation be repealed while leaving in place criminal sanctions for trafficking.¹⁶² The minority opinion of the Commission went even farther, recommending a policy of legal distribution, mirroring, in essence, Bill C-45.¹⁶³ While the Commission did not at the time change the criminal sanctions in place against cannabis use, it is said to have "brought about a considerable change in the mentalities of Canadians," raising general awareness of the issue among the population.¹⁶⁴

Prime Minister Justin Trudeau ran for election, in part, on the promise to finally take into consideration the findings of the Le Dain Commission and ultimately legalize cannabis use.¹⁶⁵ He achieved his goal in 2018 with an Act that largely borrows from the laws enacted to regulate alcohol—particularly with regards to purchase, home cultivation, and

159. *Id.* at 9. The decade between 1937 and 1946 saw a total of 25 convictions for cannabis possession. *Id.* In contrast, 1968 saw 2,300 such convictions, with convictions skyrocketing to 12,000 in 1972. *Id.*

160. *Id.*

161. *Id.* at 9–10. The commission went so far as to say that the physical and mental effects of cannabis seemed to be "much less serious than those that may result from excessive use of alcohol," at least in the short term. *Id.* It also found that there was no sufficiently scientific and medical data to identify the full range of harmful or beneficial effects of cannabis. *Id.*

162. *Id.* at 10.

163. *Id.* at 11. Dr. Bertrand's minority opinion was based on the idea that an increasingly large number of Canadians use marijuana and that the vast majority of cases don't give rise to "serious psychological difficulties, crimes, or illness." *Id.* She posited that cannabis laws should be consistent with those that regulate alcohol. *Id.*

164. *Id.* at 9.

165. *Id.* at 14.

sale—and keeps in place harsh penalties for those users who disregard those laws.¹⁶⁶ Reflecting the same rationale behind the Portuguese model of drug regulation, the official purpose of the Act is to protect public health and safety.¹⁶⁷

The Cannabis Act is so new that there is little-to-no case law on it as of yet, and it is impossible to discern the health and wellness effects that it has had on the Canadian people, but that has not stopped the INCB from coming down against it.¹⁶⁸ In their 2017 report, the INCB responded to the, at the time, proposed legislation by asserting that “the provisions of Bill C-45, which permit non-medical and non-scientific use of cannabis would be incompatible with the obligations assumed by Canada under the 1961 Convention as amended.”¹⁶⁹ The INCB reiterates that “the limitation of the use of controlled substances to medical and scientific purposes is a fundamental principle to which no derogation is permitted by the 1961 Convention as amended.”¹⁷⁰

IV. ANALYSIS OF POTENTIAL METHODS FOR RESOLVING THE CONFLICT BETWEEN THE CONVENTIONS AND LENIENT CANNABIS POLICIES, AND A PROPOSAL FOR THE FUTURE

Before looking at pathways to reconcile the conflicts that exist between the language of the UN conventions and the emerg-

166. *Id.* at 17. With alcohol, any person is free to home brew for their own consumption and enjoyment. *Id.* However, legal licenses are required for any sale of such alcohol. *Id.* The same rules and rationale apply under the Cannabis Act for home grown and cultivated marijuana. *Id.*

167. *Id.* at 29. “The purpose of this act is to protect public health and public safety, and, in particular to (a) protect the health of young persons by restricting their access to cannabis (b) protect young persons and other from inducements to use cannabis (c) provide for the illicit production of cannabis to reduce illicit activities in relation to cannabis (d) deter illicit activities in relation to cannabis through appropriate sanctions and enforcement measures (e) reduce the burden on the criminal justice system in relation to cannabis (f) provide access to a quality-controlled supply of cannabis (g) and enhance public awareness of the health risks associated with cannabis use. Cannabis Act, S.C. 2018, c. 16 (Can.).

168. *See* INCB 2017, *supra* note 37, at 36.

169. *Id.* The INCB asserts as well that “Any measures that permit or would permit the use of cannabis for non-medical purposes are in clear violation of article 4 paragraph (c), and article 36 of the 1961 Convention as amended, and article 3, paragraph 1 (a), of the 1988 Convention.” *Id.* at 35–36 (emphasis added).

170. *Id.* at 36.

ing practices of countries seeking to decriminalize and legalize cannabis use, it should be noted that there has been some suggestion that a conflict may not actually exist at all.¹⁷¹ Treaty interpretation is governed by the 1969 Vienna Convention on the Law of Treaties (VCLT), in which Article 31(1) states that “a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”¹⁷² However, Article 36(a) of the Single Convention provides that all penal provisions related to drug offense are to be subject to the “constitutional limitations” of the signatory party.¹⁷³ Additionally, the preamble to the Single Convention begins with the phrase “the parties, concerned with the health and welfare of mankind.”¹⁷⁴ It is within these clauses that some critics have posited that there is latitude for signatory countries to argue the conventions allow for more lenient, non-criminal sanctions on the use on narcotics.¹⁷⁵ Countries like the United States and Portugal can be viewed—and the INCB has reiterated as much, specifically in regards to the US¹⁷⁶—as technically in adherence

171. See Habibi & Hoffman, *supra* note 35, at 440–41.

172. Vienna Convention on the Law of Treaties art. 31, ¶ 1, May 23, 1969, 1155 U.N.T.S. 331 [hereinafter Vienna Convention]; see also Habibi & Hoffman, *supra* note 35, at 440.

173. Single Convention, *supra* note 36, art. 36(a); see also Habibi & Hoffman, *supra* note 35, at 441. Similarly, section 3.2 of the Traffic Convention establishes that penal provisions are to be subject to the “basic concepts of each party’s legal system.” Traffic Convention, *supra* note 44, art. 3.

174. Single Convention, *supra* note 36, at pmbl. There is an entirely separate argument to be made that prohibitionist policies towards cannabis regulation, and indeed drug regulation in general, run counter to the “concern of the health and welfare of mankind,” as the “war on drugs” encourages human rights violations in the form of vast incarceration that is often racially biased and targets the most vulnerable members of society. See generally ACLU, *supra* note 1; see also Habibi & Hoffman, *supra* note 35, at 19. This argument is beyond the scope of this Note, and as such is not discussed in any depth.

175. Habibi & Hoffman, *supra* note 35, at 440–43; see also Eliason & Howse, *supra* note 77, at 340–50.

176. See DAVE BEWLEY-TAYLOR & CHRISTOPHER HALLAM, THE 2019 COMMISSION ON NARCOTIC DRUGS AND ITS MINISTERIAL SEGMENT 28 (2019). The INCB president, when speaking about the United States, compared it to “a big family”: [t]he United States has 51 sons, 51 states. You have ten stubborn ones. What are you going to do with your sons? The Federal government must impose some measures on the stubborn child. The Federal government does it already.” *Id.*; see also Wayne Hall, *The Future of the International Drug Control System and National Drug Prohibitions*, 113 SOC’Y

with the Conventions, as cannabis use remains officially prohibited, even though it may be decriminalized. Despite this, the INCB has repeatedly reiterated the goal of strictly prohibiting cannabis use for non-medical and non-scientific purposes, unequivocally putting regimes that *legalize* the practice, like Uruguay and Canada's new Cannabis Act, in conflict with the stated purpose of the treaties. Canada's situation in particular, due to the country's stature in the international community, makes facing these issues of paramount importance. As such, it is necessary to look at possible ways in which policies that legalize cannabis use and cultivation can reconcile their conflicts with the UN treaties.

The most straightforward way to eliminate this problem would, of course, be to amend the treaties themselves, rescheduling cannabis and its derivatives. However, as previously discussed, Article 47 of the Single Convention makes it difficult for a signatory country to directly amend the treaties through proposals.¹⁷⁷ A spark of hope appeared in 2018, however, when the WHO ECDD announced that they would convene to evaluate, for the first time ever, the appropriateness of cannabis's current scheduling within the UN conventions.¹⁷⁸ In 2019, the ECDD announced their findings, recommending to the Secretary General of the UN that cannabis and cannabis resin be removed from Schedule IV of the Single Convention, and that THC be subsequently added to Schedule I of the Single convention.¹⁷⁹ Additionally, the ECDD recommended deleting the cat-

FOR THE STUDY OF ADDICTION 1210, 1216 (2017) ("It has long been debated whether the UN system allowed signatory states to remove criminal penalties legislatively for possession and use of cannabis. For most of its history, the INCB has argued that this policy was inconsistent with the treaties, but it has ruled more recently that the treaties do allow for the use of non-criminal penalties for personal possession and use.").

177. See Single Convention, *supra* note 36, art. 47.

178. 40th WHO Expert Committee on Drug Dependence, *supra* note 39.

179. WHO Expert Comm. on Drug Dependence: Forty-First Rep., WHO Tech. Rep. Series No.1018. (Jan. 24, 2019), <https://apps.who.int/iris/bitstream/handle/10665/325073/9789241210270-eng.pdf?ua=1>. The Report found that while all other substances categorized under Schedule IV were associated with significant risk of death, cannabis is not. *Id.* at 41. Additionally, they evaluated evidence that preparations of cannabis have shown therapeutic potential from treatment of pain and other medical conditions, further distancing themselves from the other substances of Schedule IV. *Id.* However, there remains high risk of potential public

egory “extracts and tinctures of cannabis” from Schedule I, and removing cannabidiol (CBD) preparations entirely from international control.¹⁸⁰

What was seemingly an unprecedented step in the direction of change was stalled at the 62nd CND in 2019 when several member states, most notably Japan and the Russian Federation, argued passionately against the ECDD recommendations, and secured a postponement of the vote.¹⁸¹ The Russian delegate’s interventions were described as “overtly hostile, unbalanced, and arguably motivated by the country’s extreme narcophobic ideology,” while earlier in the session a speaker from the Philippines spoke in an almost threatening manner directed towards countries with lenient drug policies.¹⁸² The CND reconvened in December 2020 to finally vote on the proposed changes, narrowly accepting the WHO’s recommendation to remove cannabis and cannabis resin from Schedule IV of the single convention; the WHO’s other recommendations were subsequently rejected, however.¹⁸³ While the removal of cannabis from Schedule IV is undoubtedly a step in the right direction, the hostility towards the ECDD’s recommendations of re-scheduling and the outright hostility faced by nations seeking to legalize cannabis use highlight that amendment continues to be a difficult and uncertain path that cannot be counted on to have an impact in the near future.

health problems associated from cannabis use, and as such it should remain in Schedule I, as to allow for oversight and regulation. *Id.*

180. *Id.* at 5–6. “Extracts and tinctures” was found to be overly broad, as it could include preparations that did not produce psychotropic effects, while CBD does not have psychoactive properties, has not potential for abuse, and no potential to produce dependence. *Id.* at 5, 6.

181. BEWLEY-TAYLOR & HALLAM, *supra* note 176, at 18, 19. The Russian Federation’s delegate, in particular, expressed dismay at the suggestion, asking “why, after 58 years in Schedule 4, ‘all of a sudden we have an expert group of the WHO saying that it needs to be taken out?’” *Id.* at 19.

182. *Id.* at 7, 19. The Russian Federation’s Foreign Minister, Sergey Lavrov, was quoted as saying legalization of cannabis was “a straight road to Hell’... ; “drugs [represent] an ‘evil’, a ‘plague’, a ‘tyranny’, and a ‘scourge.’” *Id.* at 7. The speaker from the Philippines celebrated the actions of President Rodrigo Duterte, admitting to “shocking abuses” as a result of the war on drugs, but stating that “abuses are no reason that “abuses are no reason to stop the war on drugs... [The war] was given a sharper edge, a longer blade, and a wider swing.”” *Id.*

183. See generally Comm’n on Narcotic Drugs, Rep. on the Reconvened Sixty-Third Sess., U.N. Doc. E/2020/28/Add.1 (Dec. 2020), <https://undocs.org/pdf?symbol=en/E/2020/28/ADD.1>.

With direct amendment seemingly off the table for the foreseeable future, there are few options that remain for member states operating in violation of the UN conventions. The most direct way that a signatory country could avoid running counter to the conventions would be to renounce them entirely. The VCLT allows for a renunciation of a treaty when the party argues a “fundamental change in circumstances.”¹⁸⁴ It does not stretch the imagination to picture a country like Canada citing the complete failure of its formerly prohibitionist regime,¹⁸⁵ or Portugal citing its health crisis, as justification for renouncing the Single Convention or Traffic Convention. In fact, Canada itself has renounced treaties before, so this move would not be without precedent.¹⁸⁶ Additionally, renouncing the treaties outright would send a strong message, not only to the UN and INCB, but to the member states and the global population, in general, that the inefficiencies in the UN conventions as constructed were egregious enough to warrant complete abandonment. The histories of countries like Portugal, Canada, and even the United States have shown that a change in overall perception of cannabis’ status is the only method for legitimate, long term change. However, in the context of the UN Drug Conventions, a complete renunciation of the treaties could very well trigger sanctions imposed by other signatories, removal of the party from all “proceedings of the international drug control regime,” and cause potential “political and reputational” damage.¹⁸⁷ The harms caused by this would be hard to justify.

There is, however, precedent for a method that sends an equivalently strong message while preserving the party’s place in the international drug control forum: the practice of renunciation coupled with re-accession with reservation.¹⁸⁸ As provided by Articles 49 and 50 of the Single Convention, a reservation can be made by an acceding party with regards to a fairly

184. Habibi & Hoffman, *supra* note 35, at 455.

185. BEWLEY-TAYLOR & HALLAM, *supra* note 176, at 13.

186. Habibi & Hoffman, *supra* note 35, at 455–56. In 2013, Canada removed itself from the U.N. Convention to Combat Desertification, as while it removed itself from the Kyoto Protocol in 2011. *Id.*

187. *Id.*

188. *Id.* at 27 (A reservation, for the purposes of treaty accession, is a “unilateral statement... in writing to the UN Secretary-General modifying or excluding the legal effect of certain provisions within the treaty.”).

limited set of provisions within the Convention.¹⁸⁹ However, Article 50(3) allows any state which desires to make a reservation on any provision other than one explicitly provided in the previous sections of Article 49 and 50 to do so, provided that (1) the party inform the Secretary General of their intention and (2) one third of the signatory parties do not object within a twelve month period.¹⁹⁰

In 2013, Bolivia used this exact method to get around the Single Convention's prohibition of coca leaf chewing.¹⁹¹ In 1976, when Bolivia originally acceded to the Single Convention, it did so with a transitional reservation—allowed under Article 49(1)(c)—to the provisions of Article 49(2)(e), which required that the practice of chewing of coca leaf be abolished within 25 years of accession to the convention.¹⁹² Once that reservation expired, Bolivia first attempted to amend the Single convention, but was halted by eighteen other member nations.¹⁹³ As a last resort, in 2011, Bolivia used Article 50(3) to renounce the Single convention, and re-accede with a reservation.¹⁹⁴ This practice was again objected to, but did not come close to meeting the 62 member threshold necessitated by Article 50(3).¹⁹⁵ Despite the objections of the INCB and a handful of member states, it's been argued that the "silence" of the vast majority of signatories "implies their acquiescence" to the practice as legitimate.¹⁹⁶ The practice is a particularly useful tool for "reserving states to convey valuable and credible information to other parties regarding the nature and intensity of their objections to . . . changes in the state of the world that have rendered existing treaty rules problematic or inapposite."¹⁹⁷

189. Single Convention, *supra* note 36, art. 49, 50.

190. *Id.* art. 50(3). If this criterion is met, the reservation will be permitted and entered into force. *Id.*

191. Habibi & Hoffman, *supra* note 35, at 453; *see also* Eliason & Howse, *supra* note 77, at 350.

192. Habibi & Hoffman, *supra* note 35, at 453. The practice of coca leaf chewing was and is still considered by Bolivians to be of particular cultural and medicinal importance and is a protected practice under their constitution. *Id.* at 443, 453.

193. *Id.* at 26.

194. Eliason & Howse, *supra* note 77, at 350.

195. Habibi & Hoffman, *supra* note 35, at 453.

196. JELSMA ET AL., *supra* note 73, at 31.

197. DAVID BEWLEY-TAYLOR, TOM BLICKMAN & MARTIN JELSMA, THE RISE AND DECLINE OF CANNABIS PROHIBITION: THE HISTORY OF CANNABIS IN THE UN

A method of reform that has been recently advocated for by organizations like the Transnational Institute and the Global Drug Policy Observatory is that of inter se modification.¹⁹⁸ Invoking Article 41 of the Vienna Convention inter se allows for an agreement between two or more like-minded parties to a multilateral treaty to modify it as between themselves alone.¹⁹⁹ Official commentary on the Vienna Convention states that Article 41 exists because amending treaties with large numbers of members is “extremely difficult” and “it may thus happen that some of the States Parties wish to modify the treaty as between themselves alone.”²⁰⁰ Seemingly, the provision was designed specifically for situations like that posed by the current cannabis dilemma faced by the UN. However, sections (b)(i) and (ii) provide restrictions to the possibility of inter se modification that are not present in re-accession with revision. It must first be determined that any modification does not impact other parties’ abilities to enjoy their rights or fulfil their obligations under the treaty. A country which legalizes cannabis and begins producing its own supply of the drug would likely have a “spill-over”²⁰¹ effect on its neighbors’ illicit market, potentially violating the requirements of section (b)(i). Additionally, whether or not an inter se agreement on cannabis would be incompatible with the “object and purpose” of the Single Convention is a question filled with legal uncertainty, as the “object and purpose” of UN treaties occupies an enormous grey area, as demonstrated by everything enumerated in this Note thus far.

While inter se modification presents a solution that is seemingly tailored to this specific problem, it suffers from a slew of unanswered questions,²⁰² and a lack of legal precedent, unlike re-accession with reservation. Moreover, the process of re-

DRUG CONTROL SYSTEM AND OPTIONS FOR REFORM: TREATY REFORM OPTIONS, 6 (2014), https://www.tni.org/files/download/rise_and_decline_ch4.pdf.

198. See generally JELSMA ET AL., *supra* note 73, at 18–34.

199. Vienna Convention, *supra* note 172, art. 41. Per Article 41, inter se modification is allowed only if: “(a) [t]he possibility of such a modification is provided for by the treaty; or (b) [t]he modification in question is not prohibited by the treaty and: (i) [d]oes not affect the enjoyment by the other parties of their rights under the treat or the performance of their obligations; (ii) does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole.” *Id.*

200. JELSMA ET AL., *supra* note 73, at 18.

201. *Id.* at 19.

202. Habibi & Hoffman, *supra* note 35, at 454–55.

accession requires first for the party to renounce the treaty, which is a much stronger message to the rest of the signatory nations than simply making a side agreement with likeminded countries. What is hugely important in all of the test cases is a *perception* shift. It's fairly clear that legal action alone, whether that be through legislative action, incarceration, or legalization, isn't enough to substantially effect drug use in a given nation. This is evident nowhere more so than in Portugal, whose progressive system of treatment over criminalization only works because all members of society seemingly buy into it. This is likely true in Canada as well, as it's doubtful C-45 would have garnered the wide-spread public support to be passed in the absence of the Le Dain Commission and the effects that it had on public perception nearly half a century ago. In contrast, the legalization in Uruguay was passed in spite of public opinion, not because of it, and has unsurprisingly struggled to find its footing.

The same rationale applies to the signatory countries with regards to the treaties themselves: perception is everything. Evident from the aggressive rhetoric seen just this past year at the 62nd CND, many parties to the UN conventions suffer from misconstrued notions of cannabis and cannabis users, still striving for the unattainable goal of a drug free world. For countries like Canada and Uruguay, and any more who follow suit in passing regimes of legalization, the practice of renunciation followed by re-accession with reservation is the most impactful statement that they could send to their fellow signatories, while still operating within the bounds of the conventions.

CONCLUSION

A formal change of stance from the UN, amending its classification of cannabis as a Schedule 1 drug under the Single Convention and to shifting its focus from a system of penalization to one of harm reduction would go a long way to normalizing policies across the globe that might actually have an effect on drug usage rates and benefit the wellbeing of human kind. While the WHO and ECDD haven't given glimmers of hope that things are headed in that direction, for the time being at least, meaningful amendment to the conventions' Schedules seem unlikely to happen. Regardless, increasing numbers of countries around the world have taken it upon themselves to abandon the prohibitionist ideals championed by the INCB in favor of

more lenient regimes of decriminalization or legalization in order to foster economic growth, protect human rights, and improve public health.

These countries face the challenge of addressing their compliance with the UN treaties for the sake of coherence and stability within the international drug control regime. For countries engaging in a system of cannabis decriminalization, the best course of action is no action at all with regards to the UN conventions; the INCB has effectively approved of decriminalization and administrative sanctions as being acceptable within the bounds of the conventions. For countries who have made efforts to outright legalize cannabis use, renunciation followed by re-accession with reservation sends the strongest message to the rest of the signatory nations in an effort to foster more overarching change within the treaties themselves, while staying within the bounds of strict letter of the law.

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