



Can Cannabis Be Regulated in Accord with International Law?

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The UN drug treaties expressly limit cannabis use to medical and scientific purposes, and cannabis is placed under the strictest of the conventions' control schedules. But cannabis is today, and has long been, by far the world's most widely used illicit drug. Implementing the UN drug treaty obligations has led to the criminalization and incarceration of tens of millions of people around the world.

Instead of persisting with efforts to ban cannabis markets, an increasing number of sub-national and national jurisdictions are choosing to provide for legal, regulated access to cannabis for adults for non-medical purposes. Legal regulation, these jurisdictions are deciding, will be better suited to promoting the health, security, and human rights of their citizens.

But the legal regulation of drug markets for non-medical purposes clearly contravenes international drug treaty obligations. The treaties do afford certain latitude for countries, providing considerable room for manoeuvre for policy makers on a range of crucial issues, including the decriminalization of the possession of drugs for personal use and the implementation of an array of harm reduction services. However, there are limits to the latitude afforded by the treaties, and one of the clearest limits is that legally regulated access to non-medical cannabis—or non-medical use of any of the other over 250 substances within the treaties' purview, for that matter—is out of bounds.

Appealing to States' positive human rights obligations provides a powerful rationale for the legal regulation of cannabis. But grounding regulation in human rights arguments, however valid, does not automatically resolve the problem of drug treaty contravention that is entailed in cannabis regulation.

Yet cannabis regulation is moving ahead all the same. The 'Vienna consensus'—to the extent that it ever truly existed—is fractured, and starkly different national approaches to cannabis is among the key reasons why. What to do?

Reaching a new global consensus to revise or amend the UN drug control conventions in order to accommodate legally regulated markets for cannabis does not appear to be a viable scenario for the foreseeable future. Meanwhile, the limits of flexible treaty interpretations have been reached and overstretching them any further would result in undermining basic principles of international law. States that intend to move towards legal regulation, or that have already done so, are obliged to explore other options to reconcile such policy changes with their obligations under international law.

The World Health Organization (WHO) can recommend after a critical review by its Expert Committee on Drug Dependence (ECDD) to 'un-schedule' a controlled substance, and the CND can adopt the recommendation by a simple or two-thirds majority vote (for the 1961 and 1971 conventions, respectively). In fact, the ECDD's first-ever critical review of cannabis is underway, and is likely to lead to changes in the classification of the various cannabis-related substances under international control. It remains to be seen whether the WHO would recommend removing cannabis from the treaty schedules altogether, but such a recommendation would seem unlikely to get the required CND majority under present circumstances.

The only other options that do not require consensus are either UNILATERALLY by late reservations or by denunciation and re-accession with new reservations (as Bolivia did with regard to coca), or COLLECTIVELY by inter se treaty modification, whereby two or more States agree to change certain treaty provisions among themselves alone.

The *inter se* procedure—based on Article 41 of the 1969 Vienna Convention on the Law of Treaties (VCLT)—was specifically designed to find a balance between the stability of treaty regimes and the necessity of change in absence of consensus in order to respond to changing circumstances and social conditions. The *inter se* option would require that the like-minded agreement includes a clear commitment to the original treaty aim to promote the health and welfare of humankind and to maintaining the original treaty obligations vis-à-vis countries not party to the new *inter se* agreement.

As I noted, human rights arguments do not erase the issue of drug treaty non-compliance. But they do provide a strong justification for a State to enter into a temporary period of non-compliance, with the goal of formally altering its relationship to the obligations that it can no longer meet. Such a period of transitional ‘respectful non-compliance’ could set the stage for two or more States to avail themselves of the *inter se* option for treaty modification.

So, returning to the question I posed in the title of this presentation: ‘Can cannabis be regulated in accord with international law?’ Is it possible for non-medical cannabis regulation to proceed within the bounds of international law, rather than straining against them? I maintain that the answer is ‘Yes, quite possible.’ That does not mean, however, that it will be easy. Successful implementation of the *inter se* procedure will undoubtedly require some time and careful consultations before a group of States can agree among themselves on the best way forward.

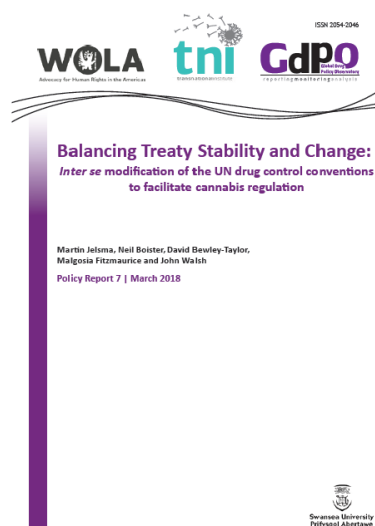
Applied with caution and reason under exceptional circumstances, *inter se* treaty modification can provide a useful safety valve for collective action to adjust a drug treaty regime that appears to be frozen in time. Taking recourse to this not-often used mechanism will surely be contested by other treaty parties, but in the current polarized climate of international drug policy, and in the absence of realistic alternatives, the *inter se* option is ‘perhaps the most elegant way out’.

An *inter se* agreement would also open the possibility of international trade between regulated licit markets, enabling small farmers in traditional Southern producing countries to participate, and also diminishing the risk of a corporate capture of the emerging licit markets. Closed national systems of regulation are unlikely to fully replace existing illicit markets that are partly

dependent on international trade to accommodate product variety and quality, cultural diversity and consumer preferences.

To conclude: the coordinated, collective response to treaty breach required by *inter se*—combined with the clear appeal to citizens’ human rights, health, and security in justifying cannabis regulation—offers a markedly better path forward than ignoring or denying treaty breach, which risks eroding fundamental principles of international law more generally. The collective *inter se* procedure is also a more promising approach than the chaotic scenarios of multiple unilateral reservations and legally dubious treaty re-interpretations.

Earlier this year, during the CND’s 61st session, WOLA and our colleagues at the Transnational Institute (TNI) and the Global Drug Policy Observatory (GDPO) launched a report, [*Balancing Treaty Stability and Change*](#), that explores in detail the rationale, potential legitimacy, and feasibility of the *inter se* option for treaty modification. Research articles on cannabis regulation and the UN drug treaties are also featured in the latest volume of the journal [*International Community Law Review*](#). As more jurisdictions opt to regulate non-medical uses of cannabis, we invite your serious consideration of the dilemma before us and the merits of the *inter se* option.



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