

**Economic and Social Council**Distr.: General
28 February 2024

English only

Commission on Narcotic Drugs**Sixty-seventh session**

Vienna, 14–22 March 2024

Item 5 (e) of the provisional agenda*

**Implementation of the international drug control
treaties: other matters arising from the
international drug control treaties****Statement submitted by Fields of Green for All NPC, a non-
governmental organization in special consultative status
with the Economic and Social Council****

The Secretary-General has received the following statement, which is being circulated in accordance with paragraphs 36 and 37 of Economic and Social Council resolution 1996/31.

* [E/CN.7/2024/1](#).

** Issued without formal editing.



Fields of Green for ALL and its **Cannabis Embassy** global partners are addressing the challenge of responses not in conformity with the international drug control conventions.

We submit that Article 2 (9) of the 1961 Single Convention (C61) does provide a legal framework for countries regulating cannabis and hemp cannabinoid products for nonmedical purposes.

Our statement is cognisant of other provisions of international law applicable to cannabis, including plant law and human rights (particularly those of farmers, peasants, and indigenous peoples).

Article 2(9): Single Convention’s Recreational Cannabis Law

The treaty system, notably the Single Convention (C61), provides a comprehensive framework to regulate drugs for medical and scientific purposes. Within this framework lies an often-overlooked provision, Article 2 (9), which provides a distinct framework for “other than medical and scientific purposes” (that is “nonmedical purposes” as explained in the Commentary) and is a viable path for the legalisation of cannabis while maintaining conformity with the C61.

Nonmedical and non-abuse = not controlled

Article 2 (9) reads:

“Parties are not required to apply the provisions of this Convention to drugs which are commonly used in industry for other than medical or scientific purposes, provided that:

(a) They **ensure** by appropriate methods of denaturing or **by other means** that the drugs so used are not liable to be abused or have ill effects (article 3, paragraph 3) and that the harmful substances cannot in practice, be recovered; and

(b) They include in the statistical information (article 20) furnished by them the amount of each drug so used.”¹

The Commentary describes “Article 4, para. (c) together with Article 2, para. 9” as “cases in which non-medical consumption or industrial use is exceptionally permitted by the Single Convention.”²

Properly understood and applied, these provisions provide the legal basis for regulating cannabis without contravening treaty law, with just two obligations in Article 2 (9) for a country’s legal cannabis industry regulations to be compliant.

Harm reduction & data reporting: legal obligations under Article 2 (9)

Subparagraph (a): 1st obligation, harm reduction

Countries can use “other means” than “denaturing” to reduce abuse and ill effects,³ which means implementing harm reduction, prevention, and other health measures.

¹ Report focused on the study of Article 2 (9):

Riboulet-Zemouli, K. (2022). *High compliance, a lex lata legalization for the non-medical cannabis industry: How to regulate recreational cannabis in accordance with the Single Convention on narcotic drugs, 1961*. Paris: FAAAT editions. This report was submitted to the 2024 Mid-Term review stakeholder contribution: www.unodc.org/documents/commissions/CND/CND_Sessions/CND_67/Stakeholder_Contributions/HumanRights/FGA4_-_HR.pdf

² UN Secretary-General (1973), *Commentary on the Single Convention on Narcotic Drugs, 1961*, United Nations Publication (E.73.XI.1), pp. 113–114

³ “Abuse and ill effects” are nowadays referred to as “substance use disorders” and “adverse drug reaction”

Unless considering that *any nonmedical use* is abuse,⁴ this provision applies to non-problematic use.

Subparagraph (a)'s wording is antiquated but clearly echoes the preamble's call for "health and welfare": as long as it is protected, and harm/addiction are reduced, Article 2 (9) can apply.

Subparagraph (b): 2nd obligation, statistical reporting

Countries must report the amounts of nonmedical cannabis within their market annually in the same INCB forms where drugs for medical use are reported (Form C, Part II.B⁵).

This second requirement enhances the international system, contributing to the cross-cutting CND challenge "that geographical coverage and availability of reliable data on the various aspects of the world drug problem requires improvement". Article 2 (9) is **the only mechanism allowing data collection on nonmedical cannabis**.

Applicability of Article 2 (9) to "CBD hemp products"

De facto, the same article applies to any "cannabis and cannabis resin" product for nonmedical use regardless of any cannabinoid content (including so-called "CBD products" sold nonmedically in many countries). Article 2 (9) is therefore valid for both "adult use" cannabis and for hemp-derived products like "CBD."

Countries' compliance with Article 2 (9) should also be questioned.

***De Lege Lata* Legalisation**

Until 2022, none of the analyses of the C61 paid attention to this article. The only discussions of Article 2 (9)'s exemption date back to 1961 during the diplomatic conference which negotiated the Convention and, at that time, the USSR warned of the flexibility of the article's language.

As mentioned earlier, the C61 Commentary published by the UN SG confirms the validity of Article 2 (9) to exempt nonmedical uses. This is meticulously analysed in the report "***High Compliance, a Lex Lata Legalization for the Non-Medical Cannabis Industry***"⁶ reviewing these provisions. After its release, questionable critiques were presented by proponents of an "inter se" amendment to the Convention.⁷ But the main reaction came from the INCB who, after hearing from the author of the study,⁸ corrected their language on a critical point: While the INCB consistently truncated Article 4 (c) in the past, forgetting the seven critical words underlined below, they now quote the article in its entirety.

Article 4 (c) on "general obligations":

"The parties shall take such legislative and administrative measures as may be necessary: [...] **Subject to the provisions of this Convention**, to limit

⁴ UNODC proves this wrong each year in its World Drug Report, showing that only a small percent of nonmedical use can be considered problematic.

⁵ Part II.B, on page 11 of Form C, governments can include figures related to the "[utilization of] narcotic drugs for the manufacture of other substances," which corresponds to Article 2 (9) (b). At the bottom of the page, governments write in "cannabis" in columns 1 and 3, and the quantity of nonmedical cannabis in the country's market in the previous year in columns 2 and 4. Form C is available on INCB's website: www.incb.org/incb/en/narcotic-drugs/Forms/Form_C.html

⁶ Reference in footnote 1.

⁷ Critiques were answered in "***Global cannabis prohibition is a house of cards. Answering the critiques of 'High Compliance'***" (*Cannabis Law Journal*, June 2022).

⁸ Kenzi Riboulet-Zemouli's INCB Civil Society Hearing, 25 May 2022 on *Analysis of the trend to legalise the nonmedical use of drugs, with an emphasis on cannabis*. www.youtube.com/watch?v=YvtakkaEFBI

exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs.”

In other words, the exemption for nonmedical use in Article 2 (9) is not affected by the obligation to “limit exclusively to medical and scientific purposes” in Article 4 (c). These complement each other in two parallel, coexisting legal schemes:

- Normal controls for medical & scientific uses;
- Exemption for nonmedical uses, as long as harms are mitigated and statistics returned.

Conclusion

The C61 is not a prohibition treaty. Instead, it is a **Framework Convention on the Control of Some Medicines within the Medical and Pharmaceutical Sectors**. Historically, interpretations have centred around prohibition, resulting in neglect of the exemptions explicitly outlined in Article 2 (9).

The Cannabis Embassy views Article 2 (9) as an unprecedented opportunity to balance between the evolving societal perspectives on cannabis and the need for responsible international drug policy.

The dual requirement (enact measures to mitigate potential harms and provide reasonable statistical reporting to the INCB) to qualify for this exemption ensures that the recreational use of cannabis is subject to responsible governance and oversight. Additionally, **Article 2 (9) reinforces the rule of law by alleviating rule tensions and risks of norm decay or non-compliance cascade**. By embracing this legitimate, existent, good-faith legal regime for the nonmedical uses of cannabis, decisionmakers can navigate tensions between conflicting rules and foster more harmonious relations on cannabis matters, without undertaking burdensome amendments or withdrawals.

As of March 2024, two UN Member States from the European continent (an island and a landlocked country) have incorporated the provision of Article 2 (9) into their nonmedical cannabis legislation. As the interpretation of, and reliance upon this article as a legal umbrella will *de facto* continue to expand, the **time has come for the CND to discuss Article 2, paragraph 9**. We urge this esteemed assembly to engage in this dialogue.

Postscript: Remembering the wisdom of Judge Leroy

Judge Bernard Leroy, an esteemed member of the INCB renowned for his profound expertise in international law, passed away on February 20, 2023. May he rest in peace.

He was certainly not known for his sympathy towards cannabis legalisation, but was open to dialogue.

In July 2022, he engaged in lengthy discussions with the author of *High Compliance* and other parties in the margins of France’s Economic and Social Council⁹ hearings on cannabis. There, he shared **his conviction that nonmedical cannabis could indeed be legitimately regulated through Article 2 (9)**. This acknowledgment, and later dedication to work towards the normalisation of Article 2 (9) represented an unprecedented hope for Vienna drug policy discussions.

Even more notable was his attention to socio-economic and environmental issues and mechanisms to transition towards legality, which he saw as a reinforcement of his commitment to public safety, health and wellbeing.

⁹ Consultative body.

Regrettably, Leroy's work to explain Article 2 (9) remains unfinished, leaving the INCB a vacuum once filled, albeit briefly, by his capacity to adapt, listen, learn, and think.

We call on all Vienna stakeholders to uphold these qualities, keeping their minds open.
