Global cannabis prohibition is a house of cards. Answering the critiques of 'High Compliance'

Kenzi Riboulet-Zemouli, 2022

This article was initially published in *Cannabis law Journal*, June 2022 issue.

1. Setting the stage

After Uruguay and Canada, Malta became the third sovereign State, in late 2021, to legalize cannabis for non-medical purposes. These 3 States are each party to the **Single Convention on narcotic drugs, 1961**: the core treaty dealing with cannabis in international law.

While Uruguay and Malta did not spend a lot of time discussing the links and interactions of their legalization bills with the Single Convention, Canada did, declaring that its "Bill C-45" was "contravening certain obligations relating to cannabis under the three UN drug conventions." This followed the publication of a position paper by the International Narcotics Control Board (INCB –a treaty body in charge of monitoring some aspects of the Convention) saying: "legalization and regulation of cannabis for non-medical and non-scientific purposes, as foreseen in Bill C-45, cannot be reconciled with Canada's international obligations under Article 4(c) of the 1961 Single Convention."

Article 4(c) reads: « The parties shall take such legislative and administrative measures as may be necessary [...] subject to the 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. »

High Compliance argues that, foreseen differently than in Bill C-45, the regulation of cannabis for non-medical and non-scientific purposes could be reconciled with Article 4(c).

When comparing Canada's Bill with other similar pieces of legislation (in *High Compliance*, Annex II, pp. 129-132), one element calls the attention of those readers who are knowledgeable of the Single Convention. Contrarily to Uruguay and Canada where laws hardly relate to the Convention, Malta uses language that is suspiciously similar to the Single Convention's Article 2(9), and does so in the very opening segment defining the scope of the Maltese legalization law:

Bill No. 241, Article 3 (p. C 6487): *« it shall be the function of the Authority [on the Responsible Use of Cannabis] to regulate the use of cannabis for purposes other than medical or scientific purposes »* but also *« to implement harm reduction from the use of cannabis. »* The Authority is also tasked to *« monitor the use of cannabis in Malta, other than use for medical or scientific purposes »*

This language is closely similar to Article 2(9) and its subparagraphs (a) and (b). But it is not found in Canada's Bill C-45.

1.1. Article 2(9): legal treaty provisions regulating non-medical cannabis

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 [...] and that the harmful substances cannot in practice be recovered; and (b) They include in the statistical information [...] furnished by them the amount of each drug so used. »

High Compliance, at length, explains that:

- The introductory sentence in Article 2(9) can be related to the common terms of "non-medical cannabis industry" (used routinely by INCB, governments, researchers, users…),

- Subparagraph (a) gives various options to Parties when it comes to exempting drugs: one of these options is to “denature” them, another is to rely on “other means” for the ultimate purpose of reducing substance use disorders and harms (*e.g.*, harm reduction):
    - The maxim “*ut res magis valeat quam pereat*” or principle of maximum effectiveness –core customary principle and “a true general rule of interpretation" according to the International Law Commission– leads us to understand this subparagraph in a way that no word or part is left void or without effect; that the subparagraph has to be valid for all drugs, not only for cannabis or multi-compound drugs; and that it has to be compatible with the object and purpose of the Convention (protecting the health and welfare of humankind by creating international legal controls).
    - *High Compliance* explains and substantiates that the necessary application of the principle of maximum effectiveness leads to the conclusion that a country cannot be prevented from applying “other means" than denaturing, and that “harmful substances cannot in practice be recovered” cannot be constructed as equal to “denaturing”; it also shows that it does not necessarily mean “removing THC” either.
- Subpara. (b) consists in sending each year to INCB monitoring data on exempted uses of drugs (there’s a section for that in a form that INCB already distributes to governments for their reporting).

Malta’s law and *High Compliance* are not alone in giving to Article 2(9) a special relevance: the drafters of the Single Convention also did, as is shown by a comprehensive reading of the *travaux préparatoires* –the two volumes of Official Records containing the minutes from the discussions and negotiations that led to the final text of the Single Convention. The drafters vested Article 2(9) with a character of intertemporality: it was crafted to become useful in an uncertain distant future, required to be applied only in that distant future, and therefore necessarily interpreted with the words of that future.

In simplified terms: intertemporal dispositions denote from the general rule of “contemporaneity” in international law, which requires us to interpret a treaty in the context and with the words of the time it was concluded. If the Single Convention must be interpreted with a 1961-type of mindset, the drafters wanted us, in 2022, to interpret Article 2(9) –and only Article 2(9)– with the words of 2022 (*High Compliance* discusses intertemporality pp. 84-90), as the International Court of Justice puts it: taking account “of the meaning acquired by the terms in question upon each occasion on which the treaty is to be applied.”

While probably correct that Canada is currently failing to comply with Article 4(c), it is much harder to qualify the case of Malta as a *prima facie* case of breach, because of its apparent reliance on Article 2(9).

And this is why it is worth paying some attention to the elements outlined in *High Compliance*, where it is explained why complying with Article 2(9) is a legitimate way to claim compliance with Article 4(c) when enacting the “legalization and regulation of cannabis for non-medical and non-scientific purposes.”

1.2. Compliance with Article 4(c) and compliance with Article 2(9) are closely related.

Article 4(c) says –when read in its entirety, and not truncated as unfortunately is the case all too many times– that States must take all measures "subject to the provisions of this Convention, to limit exclusively to medical and scientific purposes" all activities involving drugs (drugs are defined as: anything listed in Schedule I or II).

The seven words "subject to the provisions of this Convention" (often forgotten in INCB or scholars' quotations) refer to a series of other Articles in the Single Convention, all of them concerning "other than medical and scientific use," all of them providing for the exemption of such uses from some obligations of the Convention. To make it clearer, Article 4(c) can be reformulated as: *subject to the provisions exempting drugs for other than medical and scientific purposes, Parties must limit exclusively to medical and scientific purposes all activities involving drugs.*

Interpreting Article 4(c) otherwise implies to ignore its first seven words (something hard to legitimize), also making it quite difficult to give any reasonable meaning to Articles 2(9), 27 and 49 –which only talk about exempting specific types of "other than medical and scientific purposes"...

On several occasions, the seven words "subject to the provisions of this Convention" are associated with the exemptions of Articles 2(9), 27, and 49, in the *Commentary on the Single Convention* (a reference UN Secretary-General document, redacted by Adolf Lande –a direct testimony of the drafting and expert in the field, which, however, represent one particular interpretation and should not be taken as a definitive statement of the law).

Compliance with Article 4(c) therefore means: on the one hand, limiting drugs to medical and scientific purposes under the extensive regime established by the Convention for medical and scientific purposes; on the other hand (if a country so decides) exempting the exact same drugs from that limitation and from some provisions of the Convention as laid down respectively in the Articles 2(9), 27, and 49.

Article 27 is specific to non-medical use of coca leaves. Article 49 is specific to traditional non-medical uses (and is not applicable anymore: it came with an expiration date). Article 2(9) is specific to non-medical uses common in industry, and it is still applicable.

Compliance with the exemption of drugs from the "limitation to medical and scientific purposes" (enshrined in the last part of Article 4(c)) means complying with the Articles to which that limitation is subject (in the first part of Article 4(c) –the seven words).

In the case of the non-medical cannabis industry, compliance with 4(c) means that the Party shall take appropriate measures to frame such industry under the terms of Article 2(9): it must avoid substance use disorder and reduce harms, and it must furnish statistical monitoring data to the INCB.

This is, in short terms, the interpretation explained in *High Compliance*. It relies entirely on primary means of interpretation: the very text of the Single Convention, what is in it (that is, Article 2(9) exempting non-medical uses) and what is not (that is, the total lack of any explicit mention of the prohibition, ban, or any mandatory requirements against non-medical use). Subsidiary means of interpretation are only coming as added layers that confirm (or at least do not infirm) the interpretation based on the treaty's text.

1.3. Criticism

The report *High Compliance* was launched at the opening of the 65th United Nations Commission on Narcotic Drugs, and presented in plenary to country delegates in a statement by global cannabis policy expert Michael Krawitz. Early after the publication, a short piece by Peter Homberg in a "German-language B2B online magazine for the cannabis industry" heavily criticized *High Compliance*. Unfortunately, the author did not take the time to read it before criticizing, founding his entire piece on the 4-minutes speech given by Krawitz at the UN instead of on the 100+ pages legal analysis.

A month after, a blog post titled "*Highly Non-Compliant*" is published by Jason Adelstone, attorney at Vicente Sederberg LLC. Reviewer of a previous draft of *High Compliance* in 2021, Adelstone based his article on the comments he had provided at that time. Because the draft of *High Compliance* went through revisions and improvement since then (precisely following his and others' reviews), the vast majority of his criticisms are outdated: they have already been answered in the published version of *High Compliance*. His comments mostly denote an incomplete comprehension of the legal tenets, which is probably explained by the author's reliance on my unfinished draft for his criticism.

In his *"Highly Non-Compliant"*, the *ad hominem* focus and the tone, neither professional nor gentlemanly, are regrettable (the author cites the title of the study only once, but mentions "Riboulet-Zemouli" 31 times!).

Finally, two days after this publication, a group of "activist scholars" (Martin Jelsma and Tom Blickman, Transnational Institute; David Bewley-Taylor, Global Drug Policy Observatory; John Walsh, Washington Office on Latin America) shared their views about *High Compliance* in the paper *"A house of cards - a legally indefensible and confusing distraction."* This group of authors have the tactical advantage of having read the actual published version of *High Compliance* –a gesture that is appreciated, particularly when compared with Homberg and Adelstone.

Adelstone and Jelsma *et al.* do share the assessment that the prose in the report is confused and unclear in many instances. It is true, non-native English-speaking authors can have more or less agreeable literary styles. Poetry is not the point, however. Concepts and contents are. In the field of international law, linguistic openness is not optional. To their credit, though, *High Compliance*'s original sin in linguistic style may have been to attempt reconciling an exhaustive and in-depth legal analysis of complex provisions with the intention to stay accessible to a broader readership.

All critics claim *High Compliance* presents a legally indefensible interpretation. They claim my arguments are not compelling. But, as the veteran international legal scholar René Provost explains, "an opinion may be neither compelling nor authoritative and yet still qualify as a legal interpretation. Once interpretation moves beyond the rarefied judicial atmosphere, it becomes a way of engaging with others much more than a basis for an unassailable conclusion." In many aspects, the "war on drugs" interpretation of the Single Convention is much more far-fetched (as pointed out in *High Compliance*). What has been a house of cards is the current mainstream interpretation of the treaty that holds "CBD hemp" buds to be industrial exempt from treaty control, without considering the ramifications, because nothing in the Convention distinguishes a CBD bud from a THC bud.

The claim of a weak legal basis repeated in Adelstone and Jelsma *et al.*'s posts, is surprising, for the interpretation exposed in *High Compliance* acknowledges, references, and cites, in a total of 419 footnotes, all international treaties establishing rules in the field of cannabis (from the Single Convention to the Law of the Sea), it relies on international custom and the general principles of law, and finds support in an important number of international *dicta* and adjudications as well as in the teachings of the most highly qualified publicists.

Facing this, Adelstone and Jelsma *et al.* largely substantiate their claim on an interpretation of the *Commentary* of the Single Convention –which is already itself an interpretation– but not of the Convention itself, although it represents the only binding law. No references to any arbitration or to legal scholarship is found in either of their posts. Notably, however, Jelsma *et al.* include a total of 22 references: 16 are their own previous publications (none of which discuss Article 2(9)), and the others are: *High Compliance*, the Commentary, the Official Records, Adelstone's piece, and the Dutch and German reform proposals (which only distantly relate to the discussion). In contrast *High Compliance* puts forward unique, curated references in hundreds of footnotes.

Accusations of legal weakness derived from self-supporting references and publications not related to the substance matter are difficult to answer. One would have expected a legal argumentation reliant upon the terms of the treaty and upon legally-valid rules of interpretation. Unfortunately, none of the three posts made this effort.

All in all, critics rely only on subsidiary means of treaty interpretation in order to oppose a *High Compliance* which is built on primary means. As long as they do not manage to put forward primary means (that is, any element inside the actual Single Convention which would support the mandatory prohibition or an interdiction to regulate non-medical uses, not external justifications such as countries' statements of the Commentary), their arguments will hardly be receivable.

Besides this premise, and although the answers to their criticism are already almost entirely included in *High Compliance*, albeit hidden in footnotes or behind a style they dislike, I propose to answer one by one their objections, showing again that an interpretation allowing adult use legalization under Article 2(9) is neither unsound nor unrealistic, and repeating that in the field of –an inherently ambiguous– international law, there is never only one single valid interpretation.

2. Answering Jelsma *et al.*'s *"A house of cards"*

2.1. On the authors' section about « Prohibition and exemptions »

In their post *"A house of cards"*, after sharing their initial thoughts and a litany of one-liners, Jelsma *et al.* reiterate the current Schedule placement of cannabis products in the Single Convention:

> *« Unfortunately [...] cannabis remains firmly in Schedule I, alongside such substances as cocaine, fentanyl and heroin. »*

Precisely, Article 2(9) applies to substances listed in the Convention's Schedule I, where cannabis is listed. That Article provides a possibility to exempt drugs that are listed in Schedule I when they are "commonly used in industry for other than medical and scientific purposes" in the case that a government so decides.

High Compliance does not analyze the specifics of opium or coca leaves, which indeed differ; it neither analyzes cocaine, fentanyl, and heroin; but the conclusion discusses the fact that Article 2(9)'s exemption can only apply to drugs for which harms can demonstrably (and in good faith) be effectively managed, when they are used in such context of the non-medical industry. This can be demonstrated for cannabis, but may require more work in the case of other substances.

However, what is clear is that, with regard to cannabis, cannabis resin, and extracts and tinctures of cannabis (all the items listed in Schedule I), there exists no provision in the Single Convention preventing them from being exempt under Article 2(9).

The authors continue, noting that:

> *« 'High compliance' makes a big point about the disappearance of 'prohibition of cannabis' wording from early drafts of the Single Convention. However, in the context of those deliberations, 'prohibition' referred to banning cannabis for all purposes, including medical uses, and several countries rejected that notion. »*

While it may have been an opposition to the *prohibition of medical use* that motivated the change of that wording, the result, in the final text adopted, reflects the absence of the *prohibition*: for all uses.

An intention-based interpretation like the one adopted in *"A house of cards"* is legitimate only if it supports an actual textual reading of the treaty, not if it contradicts it. Therefore, as much as the drafters may have desired to enact prohibitive dispositions, their actions and the final text they unanimously approved do not support that intention. Their actions were to delete the terms "prohibition of cannabis" and other initial mentions of prohibition. There may have been a prohibitionist intention, but it has <u>not</u> been enacted into the legally-binding text of the Convention.

The authors went on to discuss, at length, elements of the treaty's negotiations that relate to medical uses, traditional uses, and hemp –which, although fascinating, are not relevant to the discussion of non-medical uses. Jelsma *et al.* however fail to pay any attention to the negotiations of Article 2(9) itself, which could however have enlightened their analysis. This total oversight of Article 2(9) and its special drafting history (more on that below) is a

common feature in all previous publications by this group of scholars, who never get anywhere close to discussing that important Article.

This blind spot explains why the authors err in their understanding of the negotiations' outcomes (both the final consensus reached and the final legal provisions enacted). They comment:

> *« With a few other countries, India actually preferred to provide a more general exemption for 'other legitimate uses', as had been used in previous treaties. That would have afforded much more flexibility for traditional, social and religious practices, not only for cannabis but also for coca and opium. »*

Yes. It is precisely these "other legitimate uses" that have been embedded, in the final wording of the Convention, into the multiple exemptions for various subtypes of "other than medical and scientific uses":

- in Article 49 (thought for being applied from the entry into force of the Convention, and during a limited time),
- in Article 2(9) (thought to be applied in a distant future, but with no time limitation).

Shortly after, the authors share a misleading statement:

> *« according to Adolf Lande (author of the Commentaries, involved in drafting the 1961 and 1971 Conventions and regularly quoted in 'High compliance' as an authority), it was "advisable to allow a certain period of grace before the complete prohibition of the practice" (Official Records I, p. 185). »*

Lande's statement does not contradict the thesis in *High Compliance*: "the practice" that Lande refers to is traditional non-medical use: not all non-medical uses. That traditional non-medical use be banned does not imply that non-traditional is as well.

This is misleading: the quote is one sentence pronounced during a meeting as advice, or opinion, by Adolfe Lande, to the plenipotentiary delegates that were negotiating the draft of the Single Convention. **That Lande expressed that idea is correct, yet, that does not constitute a statement of the law.** Adolf Lande was an authority in a similar fashion as Martin Jelsma, David Bewley-Taylor, Tom Blickman, and John Walsh are. But authorities are proponents of hermeneutics, they are not guardians of a superior truth so their words carry no weight of law *per se*.

While the report *High Compliance* does mention Lande and other scholars or stakeholders a number of times, it does not build the interpretation from their words, it bases it fully on the letter of the treaty. Other elements are brought in support or to facilitate explanation. The opposite happens with critics who base their interpretation of binding legal provisions upon preconceived notions and views from the perspective of what they perceive to be the intended goal of the treaty.

The real dispositions that ought to be scrutinized are only the ones written in the law (*i.e.* the final text of the treaty), not opinions expressed by particular stakeholders in the process which, although enlightening, do not constitute a statement of the law. It is surprising that the authors conflate these concepts, and support their opposition to the textual interpretation of *High Compliance* with vague statements of intent by different parties involved along the process –be it India or Pakistan or Adolf Lande. Jelsma and colleagues essentially make no argument related to the text of the Convention, and instead confuse the issues with quotes from discussions on unrelated provisions.

In any sound treaty interpretation, the intent of the drafters is studied to enlighten and support the exercise of interpreting legal provisions. In the topsy-turvy world of Jelsma *et al.*, however, it appears that legal provisions are used to justify a (perceived) intent of the drafters.

A reasoning not taken to its conclusions…

Importantly, right after the previous quote, the authors confirm the basic thesis developed in *High Compliance*:

> *« Unfortunately, the Conference decided against the inclusion of a broad exemption and ultimately narrowed the language that would have allowed 'other legitimate uses' to a few specified provisions deviating from the Single Convention's general and decisive obligation in Article 4(c) "to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs" »*

Why "unfortunately"? The conference (the drafters) ultimately decided that the exemption for "other legitimate uses" would be narrowed down to a few specific provisions deviating from the obligation of limitation to medical and scientific use. This is exactly the thesis of *High Compliance* and a true reflection of both the Convention and its drafting history: the other legitimate uses have not been codified via prohibitive measures but rather via deviations from the limitation included in Article 4(c). With this paragraph, the authors fully support the findings in *High Compliance*.

It is actually very fortunate that the Conference decided to embed such legitimate uses other than medical under specific provisions for exemption, rather than under specific provisions for prohibition. It is barely understandable that the authors find this "unfortunate."

This admittance made by the authors that the Convention does include « specific provisions deviating from [its] general obligation » is contradicted, a few lines below, by their statement that the treaty does not contemplate « to escape from its basic obligation », and, another couple of lines below, by their quote of the President of the negotiating Conference which stated that « "production should be prohibited except in special cases" » (note the use of "should" and "except in special cases". Is this anywhere close to, say, "must" and "under all circumstances"...?).

2.2. On the authors' section about Article 28 in « Industrial uses »

In this section, the authors bring important points to the discussion. However, they spend an excessive time analyzing and interpreting the Commentary. They accuse *High Compliance* of « misinterpret[ing] "any other purpose" » –but there is no mention of "any other purpose" in the Single Convention: only in the Commentary. We are here debating a misinterpretation of the interpretation made by the Commentary. Where has the Convention gone?

More importantly, the authors err in analyzing Article 28. They state that:

> *« Cultivation of the cannabis plant (which is not scheduled as a 'narcotic drug') is thus allowed for more industrial uses than only 'fibre and seeds' under this article, but the drug 'cannabis' is not. »*

This reflects a clear misunderstanding of the legal text. It is correct that industrial purposes are broader than only fibers and seeds. Nonetheless, it is incorrect to state that Article 28 excludes “drugs” in any way: Article 28 only establishes provisions governing the “cannabis plant”, which is not a drug (according to the definitions in Article 1). Article 28 does not govern “drugs” (those particular derivatives of the “cannabis plant” which are listed in Schedule I). Article 28, which does not concern scheduled drugs, can not preempt the application of other provisions which do. The other provision which does govern the industrial use of “the drug” is Article 2(9).

Importantly, however, it should be noted that the interpretation proposed by Jelsma *et al.* is totally valid –although not the only one. In their interpretation, a country regulating the adult use market would still have to apply the controls of Article 23 (similar to the controls required for the cultivation of opium poppy used in the production of opiate medicines) to crops cultivated for obtaining “cannabis” and “cannabis resin” regardless of the purpose. A close reading of the Convention suggests however that those controls would not be required for crops cultivated in order to obtain “extracts and tinctures of cannabis” (since only “cannabis” and “cannabis resin” are mentioned in Article 28).

A consequence of this interpretation of Article 28, defended in *“A house of cards”*, would be that the cultivation for CBD-rich “cannabis and cannabis resin” would be subject to Article 23. Indeed, the Single Convention recognizes no concept of THC threshold nor any element differentiating cannabis products based on their phytocannabinoid content: high-THC, high-CBD, low-everything, high-CBC… cannabis products listed in Schedule I are all considered equal under the Single Convention –a fact that is routinely recognized in the works of Jelsma, Bewley-Taylor, Blickman and Walsh.

To the contrary, the interpretation proposed in *High Compliance* differs: it understands that the controls of Article 23 only apply to “cannabis” and “cannabis resin” cultivated for medical and scientific purposes. Such an interpretation coheres with the two-tiered system (medical and scientific under control, *vs.* other than medical and scientific exempted from controls) established under the Single Convention by understanding that the essentially-pharmaceutical type of regulations of Article 23 are only required within the medical / scientific and pharmaceutical value chain sectors.

This latter interpretation seems to have been defended by a number of countries which exempt high-CBD cannabis plants and their derived products under the concept of industrial use, without applying the controls of Article 23.

2.3. On the authors’ section about Article 2(9) in « Industrial uses »

> *« The exemption was meant for rare cases of drugs being used in ‘industrial processes’, and the only example mentioned at the time was the use of morphine in photography. The Commentary noted that it “was of no immediate practical importance, but had been inserted to anticipate possible future developments” where drugs might be “transformed for use for harmless non-medical purposes, e.g. as dyes” »*

This is correct, and fundamental to the analysis of Article 2(9), whose provisions were crafted *for the future*, in anticipation of developments that were not known or expected at the

time. It is therefore normal that, at the time, there were little examples to provide. But Article 2(9) was not included for the dyes and photography materials: it was included for any uses of the drugs that could become common in industry, and that were still not imaginable at the time. Concepts yet undiscovered like supply reduction, demand reduction, harm reduction.

In Costa Rica *v.* Nicaragua (2009, at 242–243), the International Court of Justice (ICJ) recalls that *"there are situations in which the parties' intent upon conclusion of the treaty was, or may be presumed to have been, to give the terms used — or some of them — a meaning or content capable of evolving, not one fixed once and for all, so as to make allowance for, among other things, developments in international law. In such instances it is indeed in order to respect the parties' common intention at the time the treaty was concluded, not to depart from it, that* ***account should be taken of the meaning acquired by the terms in question upon each occasion on which the treaty is to be applied.*** *[...] where the parties have used generic terms in a treaty, the parties necessarily having been aware that the meaning of the terms was likely to evolve over time, and where the treaty has been entered into for a very long period or is 'of continuing duration,' the parties must be presumed, as a general rule, to have intended those terms to have an evolving meaning."*

In 2022, informed, regulated, responsible, adult use of cannabis is a "harmless non-medical purpose" in many jurisdictions across the world. And not only for use in dyes. The drafters left extremely clear, in the "Official Records", the intertemporal character of Article 2(9); the ICJ suggests that this requires us to analyze Article 2(9) "upon each occasion on which the treaty is to be applied." While in the occasion of interpreting the Convention in 1973 (date of publication of the Commentary) the non-medical uses that were common in licit industries were dyes, in 2022 it is the adult non-medical use of cannabis that is common in industry in a large number of jurisdictions.

It is probably right that the drafters would not have been fully happy with this interpretation. By failing to include any element preventing this interpretation, however, they would have little argument to object to it. As Helmersen (2013) puts it: ***"That treaty drafters intended terms to evolve does not presuppose that they could have foreseen the exact interpretive results reached by a future interpreter, or that they intended a specific future interpretation to prevail."*** This is confirmed by Chayes and Chayes (1993) for whom: *"Treaty drafters do not foresee every of the possible applications –let alone their contextual settings. Issues that are foreseen often cannot be resolved at the time of treaty negotiation and are swept under the rug with a formula that can mean what each party wants it to mean. Economic, technological, scientific, and even political circumstances change. All these inescapable incidents of the effort to formulate rules to govern future conduct frequently produce a zone of ambiguity within which it is difficult to say with precision what is permitted and what is forbidden."*

Later on in their post, the authors explain that, in the Official Records (*travaux préparatoires*),

> *« The only reference made to cannabis in this context [of Article 2(9)] was when the Office of Legal Affairs pointed out "that as defined in article I 'cannabis' was a drug. There were no industrial uses for that drug, but only for the hemp plant" »*

1) In the exact same fashion as explained above, the statement of the UN Office of Legal Affairs (OLA) reflects the fact that, at the time (1961), the licit industrial uses common in industry was hemp. Also note that "hemp" is an undefined and imprecise term, which does not presuppose any THC threshold. Finally, this statement is not the law itself (the OLA is but

one interpretive agent among others) and does not overrule the provisions enacted in the Convention.

2) More importantly, the claim is factually incorrect. The OLA's comment was not the "only reference made to cannabis" in the context of Article 2(9). As documented in the Single Convention's *Official Records (Vol. II* at 98–99) and referenced in *High Compliance* (p. 44, footnote 139), during a discussion focused on cannabis, the delegate from then-Republic of the Congo *"observed that under article 2, paragraph 9(a) of the draft [...], parties would not be required to apply the provisions of the Convention to drugs which were commonly used in industry for other than medical or scientific purposes, provided that they ensured by appropriate methods of denaturing or by other means that the drugs so used were not liable to be abused or have ill effects."*

Right after that, the delegate from Australia (chairing the meeting) said that *"except for the cases covered by that provision [...], extracts and tinctures of cannabis and cannabis resin would have to be retained in Schedule I."*

After such an explanation that cannabis products listed in Schedule I would be subject to the exemption of Article 2(9)(a), no objection was raised by any of the delegates present in the room (the records show that at least Canada, Egypt, France, Hungary, Mexico, Sweden, Switzerland, the UK, the USA, the USSR, and the representatives from WHO and the Drug Supervisory Body (former INCB) were present in the room, in addition to Australia and Congo).

After this, the authors conclude –with what seem to constitute their pivotal legal argument– that:

> *« If that sounds confusing and far-fetched, that is because it is. »*

It is difficult to comprehend why the authors find it "confusing and far-fetched" for high-THC cannabis, while they totally endorse it elsewhere for low-THC cannabis… particularly since the Single Convention does not mention THC or the concept of threshold.

Generally, it has to be admitted that the Single Convention is very confusing indeed and, as all other treaties, is tainted by "imprecision" and an "abstract, ambiguous nature" (O'Mahoney, 2014) as well as an "imaginative and subtle drafting to bridge the gap between opposing interests" (Aust, 2012). The 10 years that lasted the negotiations on the draft Convention were not used to improve style, but to settle differences and find compromises on widely diverging positions of the countries. The drafting of treaties is not an organized and methodological endeavor: it's a bargain and struggle of diametrically opposed stakeholders competing in the defense of a broad array of interests, with a large number of negotiating tools at hand, in and outside the draft. It is inevitable that the result be abstract, at times incoherent, always confusing provisions.

The importance and difficulty of treaty interpretation –as well as its ineluctable plurality– are direct results from this.

While *High Compliance* may appear far-fetched to some, it has the merit of being legally sustained and of giving effect to all of the provisions of the Single Convention while ignoring none. The interpretation defended in *"A house of cards"* only holds if some parts of the Convention are ignored or are devoid of their legal effect.

* * *

As *High Compliance* already relates, the drafters themselves were not convinced by the meaning behind the wording in Article 2(9). No less than the USSR delegate noted that "the phrase 'for other than medical and scientific purposes' [...] was also too vague, and there again the drafting should be improved" (Official Records Vol. 1, p. 18 - *High Compliance* p. 76). This happened three months before the conclusion of the final text, three months during which the drafters did not change this acknowledgedly-vague language. While knowing that the wording in Article 2(9) was vague, the drafters still decided to enact it. (dammit!!)

2.4. On the authors' section about « Treaty interpretation »

Surprisingly, in opening this section of the author's input, a long paragraph comes in full support of the interpretation suggested in *High Compliance*.

The following paragraph is even more questioning. There, the authors state that there is an

> *« explicit purpose of the established international drug control regime to ban those practices »* [recreational use]

The question is: where? Where is the explicit purpose? Philip Allott recalls us of what a pragmatic lawyer would be tempted to say: "'If the drafters had meant to say that, they would have said it.'"

The unreferenced statement that there is an "explicit purpose [...] to ban such uses" comes as a surprise, given that the authors generally agreed, in their previous research, that the purpose of the Single Convention is to protect "health and welfare of [hu]mankind" (as brilliantly shown by Lines in his 2017 book, and even recognized by INCB (§9)).

Other comments puncture this section, summarized in this sentence:

> *« there is—unfortunately—simply no way around the fact that legal regulation of drugs markets for recreational use contravenes certain treaty obligations »*

…which again fails to identify which particular provision is violated.

It is important, when you present an argument, to actually present an argument. Not just punchlines.

Behind an impressive and colorful florilege of adjectives and qualificatives for *High Compliance*, an in-depth analysis of the authors' post suggests that there is general agreement of the authors with a large part of my findings, associated with a failure to substantiate in the text of the Convention any objection to the interpretation that Article 2(9) is allowing countries to exempt non-medical cannabis. The intention of the drafters and statements of some parties may very well have been to ban recreational use however their actions are what counts. Only their actions bind us today, not their intentions.

2.5. On the authors' motivations

The conclusions of the authors' post call for necessary reflections that our societies have to address:

> *« It is time to plainly acknowledge that certain elements of these treaties are no longer fit for purpose, to confront the colonial legacy and injustice embedded in them »*

These are laudable objectives, that are aided by a number of elements documented in *High Compliance*. However, they also mention in the same sentence that we should

> *« support a coordinated effort of a group of like-minded countries to distance themselves from the most problematic elements of this out-dated regime. »*

Without naming it, Jelsma *et al.* surreptitiously mention here their core research focus along the past decade: the *inter se* treaty modification. As they specify in the closing sentence:

> *« over the past years we have outlined in detail the few legally available and politically viable options, either by means of treaty withdrawal and re-accession with reservations or inter se modification »*

None of their publications outlining the so-called "viable options" ever mention Article 2(9) or even acknowledge the concept of "other than medical and scientific purposes" which are clearly included in the Single Convention. Their failure to barely mention these elements in the legal analysis sustaining their proposed option suggests not only an incomplete analysis, but potentially erroneous or non-comprehensive research hypothesis. The absolute limitation of options given to countries to the few ones they found based on incomplete research questions. Other researchers, on their turn, have mentioned, identified, and discussed Article 2(9) (see for instance Room, 2013). The authors neither took the time to do it in previous decades, nor did it in their *"A house of cards"* piece.

In their introduction, the authors said:

> *« This [legal justification for regulating recreational cannabis in accordance with the 1961 United Nations Single Convention], went unnoticed by governments and by numerous experts ostensibly blinded by an orthodox prohibitionist treaty interpretation in the past decades. »*

The issue is that, not only are some experts biased by the orthodoxy of a prohibitionist treaty interpretation, but others may be subject to other biases. The identification of the *inter se* treaty modification as a possible option for cannabis legalization has turned from a topic of interest, to a central focus, and nowadays appears almost as a silo research workstream. Because the need for an *inter se* treaty modification is greatly reduced if legalization is possible under Article 2(9), one can understand the urge to delegitimize alternative options.

An *inter se* treaty amendment is only legitimate if it is aligned with the goal and purpose of the treaty it modifies. Consequently, the analysis in *"A house of cards"* according to which there is an « explicit purpose of the established international drug control regime to ban [recreational use] » seem to even delegitimize the option of an *inter se* amendment as a viable option.

Contradictions like these between *"A house of cards"* and the previous works of these respected scholars, suggest that the blog post is more like a spasmodic reaction (a profoundly human one) than a well thought-through analysis.

* * *

A closer reading of the study could have shown the authors that the legal justification explained in *High Compliance* was not "unnoticed by governments" –or at least not by all. In December 2021 (prior to the publication of the study) the Parliament of Malta passed a law that echoes the core part of the thesis explained in *High Compliance* (pp. 81-82): reliance

upon Article 2(9) and framing of recreational uses as uses for “other than medical and scientific purposes.”

That respected scholars missed it does not mean that everybody missed it, neither does it mean that it is false. *High Compliance* didn’t missed it, Malta neither, and other scholars have taken the time to at least mention and discuss Article 2(9) in the past (*e.g.* Room and MacKay 2013), something the authors of “*A house of cards*” never took a minute to do.

3. Answering Adelstone's *"Highly Non-Compliant"*

In his *"Highly Non-Compliant"*, Adelstone displays very limited knowledge in this field. The best example is probably found in his statement that:

> *« the mere fact that the Convention's restrictions aren't categorical doesn't mean that anything it doesn't expressly ban is permitted »*

Actually, it does. Stating that something not expressly banned is still somehow banned is in direct contradiction with the most basic principles of international law. Yes, things that are not expressly banned are indeed permitted. Because international law is still relatively recent and progressively unfolding, the contrary would mean that an almost infinite number of things would not be allowed under international law.

The extensive number of unfounded, weak, or simply mistaken criticisms contained in *"Highly Non-Compliant"* is surprising. After the introduction, in the second paragraph, Adestone mentions « two countries having formally enacted legal regulation of Non-Medical Cannabis » forgetting a third one, Malta (discussed in *High Compliance*), whose laws directly mentions non-medical cannabis.

In the two paragraphs below, the authors proudly truncate a legal provision (the famous Article 4(c)). There is not, and there will never be any good or valid reason for a lawyer to justify cherry-picking within a legal provision. Such a lack of professionalism at an early stage in the post discourages learned readers from engaging the rest.

Below this, the author continues to share the extent of his difficulty in reading treaties, introducing the *inter se* treaty modification proposal (discussed above). He mentions it three times, **in bold text**, and states:

> *«* Inter se *modification is a procedure allowed under Article 41 of the 1969 "Vienna Convention on the Law of Treaties" and is specifically designed to find a balance between treaty regime stability and the need for change in the absence of consensus. »*

Reading the Vienna Convention on the Law of Treaties (in full) shows that its provisions are only applicable from the moment of its entry into force (which happened in 1980), and can therefore not directly be retroactively applied to the 1961 Single Convention: "in strictly formal terms one might argue that the VCLT is not applicable" (Boister and Jelsma, 2018, p460n10).

In addition, the Single Convention itself does not include any provision allowing for an *inter se* amendment. The only amendment procedure in the SIngle Convention is a complex and impractical one. Initially, the drafters of the Single Convention contemplated a simpler, more flexible amendment procedure which would have allowed us today to update the Convention in a similar manner as the *inter se* treaty modification procedure proposed by some researchers. But the drafters refused to include it in the final text of the Convention. Instead of the easier amendment procedure, and this is critical, the drafters decided to include Article 2(9). It was either a "flexible amendment" or Article 2(9), since both were seen as having this role of a "valve" to adjust the Convention's frame in the future. This explains why Article 2(9) can be analyzed under the lens of intertemporal law (a complex matter briefly touched upon in *High Compliance* pp. 86-90); it also makes difficult the implementation of an *inter se* amendment, provided that such an option was given to the drafters, which agreed to reject it. An *inter se* amendment proposal is not supported by the text nor by the drafters' intention. This is far from what is usually described asf "legally supported and internationally

recognized methods"... These elements make the articulation of a possible *inter se* at the very least an extremely delicate endeavor –certainly less straightforward than applying mechanisms already codified in the very Single Convention, like the exemption mechanisms of Article 2(9).

That Adelstone missed that is telling: it shows, on one hand, how some stakeholders unconditionally embrace political options like the *inter se* proposal without paying sufficient attention to its tenets; on the other hand, it only but highlights further the low level of reliability of the author's international legal analyses.

The posts of Adelstone and of Jelsma *et al.* were published almost simultaneously; both are proponents of an *inter se* treaty modification as the only way forwards for cannabis legalization; both are highly invested in this strategy, seemingly to the point of spending efforts against competing ideas and dissident strategies instead of opposing drug prohibition. In many aspects, they showcase signs of a "*research silo*." But **in this complex field, we should always prefer to remain cool-headed, instead of drinking the kool-aid.**

3.1. On the author's section about « Articles 4 and 49 »

Adelstone here selects quote fragments from the Commentary which fully support the thesis in *High Compliance*. A quote that the author plainly reproduced is clear about this: "Parties cannot legally authorize the possession of drugs for other than medical and scientific purposes, except in the **cases in which non-medical consumption or industrial use is exceptionally permitted** by the Single Convention"

The cases in which non-medical consumption or industrial use is exceptionally permitted include: Article 27 (non-medical use of coca leaf as a flavoring agent), Article 49 (exemption of coca, opium, and cannabis for the non-medical uses that were traditional before 1 January 1961)... and Article 2(9) (exemption of all drugs for non-medical uses common in industry).

The Commentary is consistent about this; but the quotes in *"Highly Non-Compliant"*, however, are truncated and incomplete, generally omitting the parts in the Commentary which mention the exemptions… or sometimes quoting them without apparently realizing what is actually being quoted.

Ignoring totally Articles 27 and 2(9), the author then discusses Article 49 that he sees as "the only exception", forgetting that this article only concerns those non-medical uses that were traditional before 1 January 1961 -not all non-medical uses. As discussed above (and in *High Compliance*, pp. 37-41, 43, 89-90), the "traditional" non-medical uses were exempted under Article 49, which has indeed nowadays ceased to be applicable. However, other non-medical uses "common in industry" (*i.e.* distinct from the pre-1961 uses that were traditional and unregulated) are exempted under Article 2(9) and are still applicable.

It is surprising that the author, so attached to the Commentary (to the point of interpreting it instead of interpreting the Convention itself) missed the fact that the Commentary clearly explains that article 4(c), when read in full, does subjects the limitation to medical and scientific uses to three exemptions, in Articles 2(9), 27 and 49. This is consistent and repeated on numerous occasions in the Commentary. But, Adelstone, either didn't read the Commentary in full nor Article 4(c) in full. In this context, his accusations of "cherry-picking" are rather dramatically hypocritical.

3.2. On the author's section about « Articles 4 and 33 »

The author relies on this quote from the Commentary, to try to prove his point:

« Parties [...] must not permit the possession of drugs **except under legal authority** »

And legal authority includes the exemption under Article 2(9). Since Article 49 lapsed and Article 27 applies only to coca leaf, in 2022, non-medical possession of cannabis only remains "exceptionally permitted" under Article 2(9). If countries comply with Article 2(9), they can permit –therefore under legal authority– all activities enumerated in Article 4(c) (production, manufacture, export, import, distribution of, trade in, use and possession) for non-medical purposes.

3.3. On the author's section about « Article 2 »

I never thought it would be required to recall this, but: the meaning of the sentence "or by other means" is: "or by other means."

"By denaturation or by other means" has the exact meaning that it has. There is no need to reinvent the wheel. "Blue or other colors" means blue and any of the other possible colors that exist. It does not means "blue and shades of blue." Therefore, "denaturation of other means" does not mean "denaturation or other closely-related chemical processes to change the chemical composition of the products." Or else, the drafters would have written that.

Article 2(9)(a) obliges countries to reduce harms and potential for abuse, proposing them either to reach that goal by denaturing, or by any other means. This is confirmed in all official languages of the Single Convention (which are all equally valid). Article 2(9)(a) says:

- What? Avoid abuse and harms.
- How? By denaturing or by other means.

It is not that complex. It is the only grammatical construct of that sentence that makes sense of all words and punctuation, and has a similar meaning in all 6 languages of the Convention (all of which are equally-authentic).

Article 2(9)(a) can also be explained as below:

Action (what to do)	ensure that the drugs used for other than medical and scientific use
Goal (why doing it)	are not liable to be abused or have ill effects and that the harmful substances cannot in practice be recovered
Method (how to do it)	by appropriate methods of denaturing or by other means

A problem in Adelstone's analysis seems to lie in his perceptions of the harms of cannabis: for him, apparently, it is not possible to reduce the harms and potential for abuse associated with cannabis; consequently, cannabis could not be exempt. I respectfully disagree, and

believe that efficient prevention and harm reduction strategies have shown effectiveness in reducing the burden for public health of cannabis use disorders.

The author says “for cannabis to be [exempt] it would need to no longer be liable for abuse or have ill effects.” That is exactly what Article 2(9) is here for: obliging countries to take measures (denaturing or any other means) for that specific purpose.

All in all, the author seems very confused on the topic of cannabis and harms. He discusses the use of cannabis “as an effective prevention of substance use disorders” of other substances –totally of topic, he apparently fails to differentiate harm reduction of cannabis (reducing the potential harms linked to cannabis use) from harm reduction with cannabis (using cannabis, as an adjunct or substitute, to reduce the potential harms of the use of other substances). Not only does the author show the extent of his ignorance of basic principles of international law he also makes public his deficit of understanding of the health-related aspects of cannabis, however critical in any cannabis policymaking endeavor.

Eventually, the author declares that « Riboulet-Zemouli misses an opportunity to discuss hemp since it has been a common industrial crop for centuries and has no qualifying definition under the Convention. » It is surprising to read that I failed to discuss hemp, having published numerous research papers on hemp since 2016 (most of which are preliminary findings supporting the thesis detailed in *High Compliance*), alone or with co-authors: “*Hemp & the treaty*”, “*CBD as a narcotic? Food for thought*”, “*Joint EIHA-FAAAT contribution to the evaluation of CBD, 39th WHO Expert Committee on Drug Dependence*” etc.

What Adelstone fails to realize is that the lack of any definition of “hemp” in the Convention is extremely relevant. This legal effect of such a silence on the codification of what “hemp” is (the word is not even mentioned in the treaty) is precisely that there is no difference between “non-medical hemp” and “non-medical marijuana” in the Convention. It’s all “non-medical cannabis”. The only difference that exists is between purposes: either medical and scientific, or not.

The exemption of “hemp” under the Single Convention is the same as the exemption for “adult use.” Nothing in the text of the Convention says otherwise, and this fact was acknowledged on two occasions by the drafters (as discussed in the previous section: Congo and Australia confirmed the applicability of Article 2(9) to cannabis drugs, and the OLA mentioned its application to “hemp”).

The only difference[s] that the Convention recognizes between “hemp” and “adult use” are the potential for abuse, ill effects, and harms. This is why countries are obliged to reduce abuse, ill effects and harms from cannabis drugs under Article 2(9), but are not required to do so for non-drug cannabis products, such as seeds and fiber. But, as long as a country ensures by appropriate means (including, but not limited to, denaturing) to ensure non-medical cannabis is not liable to cause harms and abuse, it can lawfully exempt it.

* * *

Littering his blog post, the author places a number of cryptic sentences. My favorites were:

“Simply claiming that non-medical use is authorized, without support, does not makes so” –a fascinating role reversal, in an unsupported sentence criticizing a 145-pages legal analysis.

Also:

“one would have to believe that the Convention regulates semantics, not substances” (in order for the interpretation in *High Compliance* to hold).

Coming from a lawyer, such a statement is very confusing… Interpreting international law, both for customary (unwritten) rules and treaty provisions (written), is an endeavor that utterly relies on analyzing semantics. Interpretation is semantics. International relations (at least in peacetime, but arguably not only in peacetime) are nothing but semantics. The law is not a binary algorithm. In this particular case, the intertemporality of Article 2(9) enlightened by the dictum of the ICJ in Costa Rica *v.* Nicaragua (2009) suggests that we should take into account “the meaning acquired by the terms in question upon each occasion on which the treaty is to be applied.” That implies respecting semantics.

It is true that the Single Convention does not regulate semantics; however, applicable rules of treaty interpretation (totally foreign to Adelstone) absolutely do.

Unaware of international law, unaware of previous research, unaware of the realities of cannabis-related harms, the author showcases in his post seriously questionable competence with regard to some of the components of international cannabis law.

In closing his *“Highly Non-Compliant”* paper, the author betrays his apparent bias: embracing what he sees as the only two “internationally recognized programs for implementing non-medical cannabis”: a reservation to the Convention, or the notorious *inter se* treaty modification –options also defended by Jelsma *et al*.

But neither of these two options are really “internationally recognized”: no country has embraced the *inter se* option (for reasons discussed above), and the only country that withdrew and reassessed with reservations (Bolivia w.r.t. coca leaf) received numerous written objections by other Parties. Both options are debatable with respect to their outcomes: the *inter se* option is deep in unknown territory, and the steps taken by Bolivia have resulted in no discernable improvements on the ground.

The interpretation proposed in *High Compliance* is only one possible added option. It has the advantage of relying fully on the text of the Single Convention, of being implementable immediately (*lex lata*) and universally, and of establishing reasonable and public health-oriented obligations (to reduce harms by appropriate means, and to report data to the INCB). Furthermore, it is not incompatible with the other options, and some elements outlined in *High Compliance* could actually enrich the other reform options proposed: if an *inter se* modification was to happen, it may be relevant for such amendment to clarify Article 2(9) or rely on some of its terms; if a country was to withdraw and reassess, its reservations could articulate around Article 2(9).

4. Concluding thoughts

Adelstone, Homberg, Jelsma, Bewley-Taylor, Blickman, and Walsh, opted not only for restrictive or unilateral options, but also to defend a limitation in the range and diversity of options available to countries. They chose to spend their energy campaigning against a reform-enabling and public health-compatible interpretation; meanwhile, interpretations fueling a war on cannabis are continuing to thrive in many parts of the world.

Worst: in opposing the wrong adversary, they chose to favor punchlines over legal substance. Homberg chose to judge the book by the cover. Adelstone opted for *ad'hominem* attack, bad faith, and self-contradicting arguments. All failed to base their argumentation on the treaty's binding provisions, and fell short of even considering applicables rules of treaty interpretation or relevant case law. Instead, they overly rely on their perception of what the intentions of (some of) the drafters were, and on dubious re-interpretations of the Commentary's non-binding interpretation. They also all seem to assume a haunting, unwritten spirit of prohibition, not actually translated into words anywhere in the Single Convention, but which still somehow they think ought to bind us. A method of treaty interpretation that approaches esoterism.

* * *

It is well established since the dictum on the oder river case (PCIJ 1929) that in ultimate instance, more leniently should be had in case of doubt, a doctrine known as ***in dubio mitius*** (*High Compliance* p. 115). As Fahner explained recently: "some questions of treaty interpretation may not have a single permissible answer, even after an application of the customary rules of treaty interpretation, and instead allow for legitimate disagreement or 'doubt'. In such circumstances, *in dubio mitius* provides treaty interpreters with a solution, advising them to limit the scope of vague provisions to a normative core that can be deduced with sufficient certainty." That normative core is not the unwritten prohibition: it is the goal of protecting the health and welfare of humankind.

The interpretation presented in *High Compliance* creates a context where the "outcome makes at least one actor better off and no actor worse off relative to the status quo" (Koremenos 2016 calls this a situation of "Paretho superiority") because reforms are undertaken within the boundaries of a country's territory. In such a case, *in favorem libertatis* (State Parties should opt for the interpretation which limits the least their freedom, whilst not undermining that of other Parties, neither within their jurisdiction nor internationally) can be claimed –see *High Compliance* p. 117.

* * *

The following sentence by Homberg probably illustrates the cognitive biases at stake (also discussed under a historical lens in the introduction of *High Compliance*) that drive progressive figures of the drug policy reform movement to endorse options complacent, if not supportive of, the most reactionary treaty interpretations and implementations:

> *« an international misinterpretation of the Single Convention for more than 60 years (which seems improbable anyway) can be ruled out » (translated)*

Firstly, there is never one single interpretation of a treaty. It may be the Single Convention, there is no single interpretation. That statement (and critics generally) imply the contrary.

Secondly, why would it be impossible for interpretive agents to be mistaken? Provided the critics originate from people who apparently identify themselves with those who have made these errors, critics seem to illustrate their difficulty in recognizing their own oversight or mistakes, still failing (like in all their career) to spend a second reading and analyzing Article 2(9) based on the text of the Convention and the applicable rules of treaty interpretation.

Thirdly, given the intertemporal nature of Article 2(9), which was crafted only to start applying eventually in a distant future, it is normal that its provisions were not scrutinized until that "distant future" (our present) arose. Reinterpreting Article 2(9) at times where non-medical cannabis is common in industry is a way to seek compliance in good faith, and to respect the will of the drafters. Probably more than amending the treaty in a manner that the drafters explicitly rejected.

* * *

By ardently (1) defending an immuable prohibitionist legal deadlock and (2) proposing only complex, long-term, non-universal solutions, one may be brought to wonder if the ultimate result reached by these authors and their advocacy is not to extend the life of the actual prohibition, by tying prohibition to the treaty, and presenting complex *lex ferenda* options or a treaty euthanasia as the only ways to lawfully end prohibition.

Based on my findings, I firmly believe that **prohibition is not tied to the treaty, and we do not need to wait for the treaty to die in order for prohibitions to end, lawfully.**

* * *

The normative framework for recreational cannabis in international law already exists, without the need for legal changes. In addition, articulated around the purposes of use, this framework allows us to think in terms of a normalized, post-prohibitionist regulation for cannabis and hemp. Nothing prevents traditional cannabis –which will never again look like it did before 1961– to find its way as regulated indigenous businesses, traditional industries, just like traditional sectors exist for any industry (food, wine, etc.).

More importantly, the interpretation exposed in *"High Compliance"* has gained a new relevance amidst the difficult international context driven by the Russian invasion of Ukraine: as the need for the respect of the rule of law only but becomes more critical, the interpretation exposed in *"High Compliance"* is a way for countries that democratically decide to legalize cannabis to be able to claim their good faith and their full compliance with their treaty engagements, thus not leaving to the autocracies of our world (main defenders of prohibition) the ironic pleasure of presenting themselves as the only ones to respect the law.