

The Rise and Decline of Cannabis in the UN Drug Control System

How cannabis ended up in the 1961 Single Convention, the history of soft defections and the options for regulation

*This is a draft version of a future publication on cannabis reform options.
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By Tom Blickman, Dave Bewley-Taylor and Martin Jelsma¹

Cannabis is the world's most widely illicitly used drug and the most likely candidate for drug policy reform. It is currently the only politically plausible aspirant for legal change, either by decriminalisation (the removal of criminal penalties for possession) or even outright legalisation (permitting cultivation and sale). Compared with other controlled psychoactive substances, the harms – physiological or behavioural – are less severe and cannabis is better integrated into mainstream culture. Recently Uruguay announced that it would regulate the cultivation and distribution of cannabis for non-medical and non-scientific uses. In the United States – for many decades an important custodian of the worldwide ban on cannabis – voters in the states of Washington and Colorado endorsed ballot initiatives in November 2012 and decided to tax and regulate cannabis cultivation, distribution and consumption for recreational purposes.

These developments are being hailed by some as the beginning of the end of cannabis prohibition. Nevertheless, the prohibition of cannabis for recreational purposes is entrenched in the United Nations drug control conventions; a suite of three reinforcing treaties ratified by almost every state. The 1961 UN Single Convention on Narcotic Drugs, the bedrock of what has been called the global drug prohibition regime,² limits “the production, manufacture, export, import, distribution of, trade in, use and possession” of cannabis “exclusively to medical and scientific purposes” (Article 4)³ – as defined in terms of western medicine and science, that is. During the negotiations on the convention there was even an attempt to make cannabis the only fully ‘prohibited’ substance on the premise that “the medical use of cannabis was practically obsolete

1. Martin Jelsma is the coordinator and Tom Blickman a senior researcher of the Drugs & Democracy programme at the Transnational Institute (TNI) in the Netherlands. David Bewley-Taylor is a Senior Lecturer in the Department of Political and Cultural Studies, Swansea University UK, an Associate Consultant with the International Drug Policy Consortium and an Associate Fellow of TNI.

² Andreas, Peter and Ethan Nadelmann, (2006) *Policing the Globe: Criminalization and Crime Control in International Relations*, (New York: Oxford University Press), p. 38

3. United Nations (1961). *Single Convention on Narcotic Drugs, 1961, as amended by the 1972 Protocol Amending the Single Convention on Narcotic Drugs*, Article 4, General Obligations; http://www.unodc.org/pdf/convention_1961_en.pdf

and that such use was no longer justified,” according to a memo from the World Health Organization (WHO).⁴

However, contrary to popular belief, the use of cannabis is not prohibited by the conventions. The 1961 Single Convention established that any other act beyond medical and scientific purpose should be punishable offences (Article 36), while the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances obliged states to establish such acts as a criminal offence under its domestic law. While the treaties allow for some latitude in interpretation when it concerns cultivation, purchase and possession for personal use, proscriptions laid out in the conventions clearly prevent authorities to allow for a legally regulated market – including cultivation, supply, production, manufacture or sale – for recreational purposes along the lines of models developed for alcohol and tobacco.⁵

The initiatives for regulated cannabis markets in Uruguay and the states of Washington and Colorado are therefore in contravention of the conventions (not to mention the federal Controlled Substances Act in the US in the latter case). Consequently, Raymond Yans, the president of the International Narcotics Control Board (INCB) – the ‘independent and quasi-judicial monitoring body’ of the conventions⁶ – wasted no time in denouncing Uruguay. Yans condemned the country for being the ‘weakest link’ in the global drug control chain.⁷ In an interview with the Spanish news agency EFE, he also issued a thinly-veiled threat that Uruguay’s move toward regulated cannabis could jeopardize the country’s access to essential medicines.⁸ In its 2012 annual report, the Board stated that it

wishes to point out that such an initiative ... would be contrary to the provisions of the international drug control conventions. The 1961 Convention and the 1988 Convention require all States parties to limit the use of narcotic drugs, including cannabis, exclusively to medical and scientific purposes. Non-compliance by any party with the provisions of the international drug control treaties could have far-reaching negative consequences for the functioning of the entire international drug control system.⁹

4. Bewley-Taylor, David and Martin Jelsma (2012a), ‘Regime change: Re-visiting the 1961 Single Convention on Narcotic Drugs,’ *International Journal of Drug Policy*, Volume 23, Issue 1, January 2012, pp. 72–81, quoting: E/CONF.34/24 (1964), *United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs*, New York, 24 January-25 March 1961. Official records, Volume 1: Summary records of plenary meetings. New York: United Nations. See: http://www.undrugcontrol.info/images/stories/documents/regime_change.pdf

5. Bewley-Taylor, David and Martin Jelsma (2012b). *The Limits of Latitude: The UN drug control conventions*, TNI Series on Legislative Reform of Drug Policies Nr. 18, March 2012; <http://www.undrugcontrol.info/images/stories/documents/dlr18.pdf>

6. Self-definition of the INCB used on their website, see: <http://www.incb.org/incb/en/about/mandate-functions.html>

7. *Statement by the President of the International Narcotics Control Board*, at the Thematic debate of the sixty-sixth session of the General Assembly on drugs and crime as a threat to development on the occasion of the International Day against Drug Abuse and Illicit Trafficking, New York, 26 June 2012; http://www.incb.org/documents/Speeches/Speeches2012/2012_June_Statement_INCB_President_eng_26062012.pdf

8. Lidon, Luis, *ONU espera que Uruguay autorice misión para tratar legalización de marihuana*, EFE, 3 July 2012; <http://www.elobservador.com.uy/noticia/227374/-onu-espera-que-uruguay-autorice-mision-para-tratar-legalizacion-de-marihuana/>

9. International Narcotics Control Board (INCB, 2013), *Report of the International Narcotics Control Board for 2012*, United Nations, New York, March 2013, par. 258.

Yans also voiced grave concern about the outcome of the referenda in the US that would allow the non-medical use of cannabis by adults in the states of Colorado and Washington. He stated that “*these developments are in violation of the international drug control treaties, and pose a great threat to public health and the well-being of society far beyond those states.*” Yans emphasized that State Parties have an obligation under the conventions to ensure full compliance in their entire territory, including federated states.¹⁰ In its 2012 annual report, the Board included a recommendation in which it “*urges the Government of the United States to take the necessary measures to ensure full compliance with the international drug control treaties on its entire territory.*”¹¹

These reactions show the tenacity of the self-proclaimed guardians of the conventions in keeping the status quo. Apart from use and cultivation and possession for personal use the UN drug conventions leave little room for manoeuvre and a regime change is extremely difficult, but not impossible, to achieve. A case in point is the attempt of Bolivia in 2011 to amend the 1961 Single Convention to remove the obligation to ban the ancestral habit of chewing of coca leaves in the country.¹² Without any objections, Bolivia’s request would have been approved automatically. It was clear from the outset that the US government would object. In order to prevent Washington from standing alone, the US, supported by the INCB, convened a group of so-called ‘friends of the convention’ to rally against what they perceived to be an undermining of the ‘integrity’ of the convention and its guiding principles. They managed to find 18 allies to object and the amendment was blocked.¹³ Although the US and others did not particularly object to coca chewing as such, the opposition to the amendment was clearly inspired by the fear that had it succeeded, other amendments, in particular regarding cannabis, would follow.

After the attempt to amend the convention failed, Bolivia felt obliged to denounce the 1961 Single Convention and request re-accession with a reservation regarding coca chewing. This procedure, permitted by the Convention, could only be blocked if one-third or more of the 184 State Parties to the treaty objected. This time the US did not manage to rally the necessary 63 states, in fact only 15 objected, and Bolivia officially re-acceded with a reservation that allowed for the traditional use of coca in the country.¹⁴ The Bolivian denunciation was again strongly condemned by the INCB, which

10. INCB President voices concern about the outcome of recent referenda about non-medical use of cannabis in the United States in a number of states, UN Information Service (UNIS/NAR/1153), November 15, 2012; http://www.incb.org/documents/Press_Releases/press_release_151112.pdf

11. INCB (2013), Recommendation 5, p. 116.

12. Jelsma, Martin (2011). *Lifting the ban on coca chewing: Bolivia’s proposal to amend the 1961 Single Convention*, Series on Legislative Reform of Drug Policies Nr. 11, March 2011. The 1961 UN Single Convention on Narcotic Drugs stipulates that the chewing of coca leaves should be phased out within 25 years of its coming into force end 1964. This verdict was based on a blatantly prejudiced report from the Commission of Enquiry on the Coca Leaf of 1950, containing no serious evidence for the ban. In 2009, the President of Bolivia, Evo Morales, sent a letter to U.N. Secretary General, Ban Ki Moon, asking that the ban on coca leaf chewing be removed, while maintaining the world strict controls on cocaine. For the report from the Commission of Enquiry on the Coca Leaf of 1950 see: <http://druglawreform.info/images/stories/documents/coca-inquiry-1950e.pdf>

13. For a list of the countries that objected, see: <http://www.undrugcontrol.info/en/issues/unscheduling-the-coca-leaf/item/1184-objections-and-support-for-bolivias-coca-amendment>

14. See: TNI/WOLA press release, *Bolivia wins a rightful victory on the coca leaf: Creates a positive example for modernizing the UN drug conventions*, TNI/WOLA press release, January 11, 2013 (including a list of the countries that objected); <http://druglawreform.info/en/newsroom/press-releases/item/4267-bolivia-wins-a-rightful-victory-on-the-coca-leaf>

was concerned about Bolivia setting a precedent that other countries might follow for resolving their legal tensions with the conventions. The Board called on the international community to

not accept any approach whereby Governments use the mechanism of denunciation and re-accession with reservation, in order to free themselves from the obligation to implement certain treaty provisions. Such approach would undermine the integrity of the global drug control system.¹⁵

This, in short, is the current state of cannabis control within the convention framework. However, now that some sort of change of the regime relative to cannabis may be looming on the horizon, it is also opportune to find out how and why cannabis was originally included in the 1961 Single Convention and analyse options for treaty reform. This briefing will look more in depth into the issues described above, and track the early history of cannabis control. It will also look at the role of the UN institutions involved, including the WHO – mandated by the conventions to propose scheduling recommendations – and describe examples of national and subnational level cannabis law reform in practice.

The early history of cannabis control

The cannabis plant has been used for religious, medicinal, industrial and recreational purposes since early mankind.¹⁶ Hemp fibre was used for the manufacturing of paper and was used for rope and sail cloth, enabling European powers to build their colonial empires, where they discovered that the plant also was used as an intoxicant and for medical purposes.¹⁷ Its psychoactive properties sporadically sparked controversy and led to the occasional banning, but also to early attempts to regulate the market without resorting to outright prohibition for recreational or religious purposes banned by the current UN conventions.

Cannabis control developed in the context of national and international initiatives in the area of drug control during the late 19th and early 20th century – in particular, relating to opium, together with increased supervision of pharmaceutical products in general.¹⁸ Just as with opium poppy and coca bush the debate about control preceded the United Nations and even its predecessor the League of Nations. Cannabis only became an international issue when the dominant powers during the era started to discuss drug control. A report by the Senate Special Committee on Illegal Drugs in

15. UNIS/NAR/1114, *International Narcotics Control Board Regrets Bolivia's Denunciation of the Single Convention on Narcotic Drugs*, INCB press release, 5 July 2011; <http://www.unis.unvienna.org/unis/pressrels/2011/unisnar1114.html>

16. Abel, Ernest L. (1980), *Marihuana: the first twelve thousand years*, Plenum Press, New York; <http://www.druglibrary.org/Schaffer/hemp/history/first12000/abel.htm>

17. Cannabis was first described in a medical context by the Chinese emperor Shen-Nung in 2700 BC to treat “beri-beri, constipation, female weakness, gout, malaria, rheumatism and absentmindedness.” See: Geller, Tom (2007), ‘Cannabinoids: A Secret History’, *Chemical Heritage Magazine*, Summer 2007, Vol. 25, No. 2

18. Ballotta, Danilo; Henri Bergeron and Brendan Hughes (2009), “Cannabis control in Europe,” in Sharon Rödner Sznitman, Börje Olsson and Robin Room (eds.) *A cannabis reader: global issues and local experiences*, European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), pp. 100-101; http://www.emcdda.europa.eu/attachements.cfm/att_53377_EN_emcdda-cannabis-mon-vol1-ch7-web.pdf

Canada about the emergence of the international drug control regime summarized the situation as follows:

[...] the international regime for the control of psychoactive substances, beyond any moral or even racist roots it may initially have had, is first and foremost a system that reflects the geopolitics of North-South relations in the 20th century. Indeed, the strictest controls were placed on organic substances – the coca bush, the poppy and the cannabis plant – which are often part of the ancestral traditions of the countries where these plants originate, whereas the North's cultural products, tobacco and alcohol, were ignored and the synthetic substances produced by the North's pharmaceutical industry were subject to regulation rather than prohibition.¹⁹

Early control measures were often implemented as means of social control of the labour force and groups operating on the fringes of conventional society. For instance, by eliminating hashish, the local term for cannabis in many regions, some authorities in the Arab world felt it could rid itself of – in the eyes of those authorities – a loathsome habit. Cannabis use was seen to encourage defiance, insubordination and a general disregard for the status quo, and was associated with the Sufis, an economically and socially despised sector of Moslem society. Following Napoleon Bonaparte's invasion of Egypt in 1798, the Emperor prohibited his soldiers to smoke or drink the extracts of the plant in 1800 out of fear that cannabis would provoke a loss of fighting spirit. A penalty of imprisonment of three months was imposed, implementing perhaps the first 'penal law' on cannabis.²⁰

In Egypt and near-neighbouring countries in the Mediterranean such as Turkey and Greece, cannabis prevalence was higher and attracted strong legal responses. Hashish was banned in Egypt through a series of decrees between 1868 and 1884. The cultivation, use, and importation of hashish were first forbidden in Egypt in 1868, when the sultan of Turkey still ruled over Egypt. Nevertheless, a tax on cannabis imports was imposed in 1874, while its possession had been made illegal. In 1877, the sultan ordered a nationwide campaign to confiscate and destroy cannabis, followed by another law making cultivation and importation illegal in 1879. In 1884, cultivation of cannabis became a criminal offence. However, customs officers were allowed to sell the hashish abroad – instead of destroying the confiscated amounts – to pay informers and customs officers responsible for the seizures.²¹

These attempts to outlaw cannabis had very little effect on the widespread use of hashish among the urban and rural poor, the *fellahin*, in Egypt for recreational and medicinal purposes.²² Nevertheless, they were reissued in 1891 and 1894. Hashish

19. Senate Special Committee on Illegal Drugs (2002), *Cannabis: Our Position for a Canadian Public Policy*, p. 31 ; <http://www.parl.gc.ca/Content/SEN/Committee/371/ille/rep/summary-e.pdf>

20. Ballotta, Bergeron and Hughes (2009)

21. Kozma, Liat (2011), 'Cannabis Prohibition in Egypt, 1880–1939: From Local Ban to League of Nations Diplomacy', *Middle Eastern Studies*, 47:3, 443-460; Government of India, Finance and Commerce Department, *Report of the Indian Hemp Drugs Commission*, Calcutta, March 1895, The Policy of Hemp Drug Administration; <http://www.drugtext.org/Indian-Hemp-Commission-Report/chapter-xiv.html>

22. Mills, James H. (2003). *Cannabis Britannica: Empire, Trade, and Prohibition*, Oxford University Press, pp. 177-180. Smoking hashish is still popular until this day in Egypt and the harsh laws – including capital punishment – are barely enforced, see: *Hookahs, hash and the Muslim Brotherhood*, The Global Post, February 27, 2013; <http://www.globalpost.com/dispatch/news/regions/middle-east/egypt/130221/hookahs-hash-muslim-brotherhood-Egypt-political-risk-conflict-zones>

was cheap and easily grown or smuggled in from Greece or elsewhere. Exemptions for non-Egyptians and enforcement issues made the laws largely ineffectual.²³ In Greece cultivation, importation, and use of cannabis was banned in 1890. Hashish was considered an “*imminent threat to society*,” in particular among the urban poor and rebellious youth known as *manges* in the *tekedes*, cafes frequented by hashish smokers in the harbour area of Piraeus and the centre of Athens. Nonetheless, hashish continued to be widely used and Greece was a significant exporter of hashish to Turkey and Egypt well into the 1920s.²⁴

Cannabis’s image came under attack in the 1880s when rapidly increasing temperance movements expanded their mandate from alcohol to other psychoactive substances and against intoxication in general.²⁵ But it was not inevitable that such concerns about cannabis would lead to a ban. This can be seen in the pragmatic recommendations of one of the first studies about the effects of cannabis – or Indian hemp as it was often referred to in those days – and certainly one of the most exhaustive studies even to this day; *The Indian Hemp Drugs Commission Report* in 1894. The Commission convened not as the result of any major concerns in India itself, but because of a question that was raised in the British House of Commons by temperance crusaders. They were concerned about the effects of the production and consumption of hemp and claimed that the “*lunatic asylums of India are filled with ganja smokers*.”²⁶ Because of the rarity and, perhaps, the formidable size of the seven-volume report, the wealth of information it contained did not find its way into the debates on cannabis control in the international arena by the League of Nations and the United Nations in the 1920s, 1930s and the 1950s.

Its absence from multinational discussions is pertinent today since nothing of significance in the conclusions of this landmark report on the cannabis problem in India has been proven wrong in the intermediate century. The Commission looked into earlier considerations to prohibit cannabis in 1798, 1872 and 1892, but concluded that those attempts had always been rejected on the grounds that the plant grew wild almost everywhere and attempts to stop the common habit in various forms could provoke the local population and drive them into using more harmful intoxicants. The report concluded: “*In respect to the alleged mental effects of the drugs, the Commission have come 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*.” The report also noted that “*that moderate use of these drugs is the rule, and that the excessive use is comparatively exceptional. The moderate use produces practically no ill effects*.” Within this context the Commission recommended:²⁷

23. Kendell, Robert (2003), ‘Cannabis condemned: the proscription of Indian hemp’, *Addiction*, 98(2): 143-151, February 2003.

24. C. Stefanis, C. Ballas & D. Madianou, “Sociocultural and Epidemiological Aspects of Hashish Use in Greece”, in Vera Rubin (ed) (1975). *Cannabis and Culture*, The Hague: Mouton, pp. 303-326; <http://www.drugtext.org/Cannabis-and-Culture/sociocultural-and-epidemiological-aspects-of-hashish-use-in-greece.html>

25. Geller (2007)

26. Kendell (2003); Mills (2003), pp. 93-104.

27. *Report of the Indian Hemp Drugs Commission* (1895), Summary; <http://www.drugtext.org/Indian-Hemp-Commission-Report/chapter-xviii.html>. See also: Mills (2003), pp. 118-121. The report comprised seven volumes and 3,281 pages.

1. Total prohibition of the cultivation of the hemp plant for narcotics, and of the manufacture, sale, or use of the drugs derived from it, is neither necessary nor expedient in consideration of their ascertained effects, of the prevalence of the habit of using them, of the social and religious feeling on the subject, and of the possibility of its driving the consumers to have recourse to other stimulants or narcotics which may be more deleterious (Chapter XIV, paragraphs 553 to 585).
2. The policy advocated is one of control and restriction, aimed at suppressing the excessive use and restraining the moderate use within due limits (Chapter XIV, paragraph 586).
3. The means to be adopted for the attainment of these objects are:
 - (a) adequate taxation, which can be best effected by the combination of a direct duty with the auction of the privilege of vend (Chapter XIV, paragraph 587);
 - (b) prohibiting cultivation, except under license, and centralizing cultivation (Chapter XVI, paragraphs 636 and 677);
 - (c) limiting the number of shops for the retail sale of hemp drugs (Chapter XVI, paragraph 637); and
 - (d) limiting the extent of legal possession (Chapter XVI, paragraphs 689 and 690). The limit of legal possession of *ganja* or *charas* or any preparation or mixture thereof would be 5 *tola* (about 60 grams), *bhang* or any mixture thereof one quarter of a *ser* (a quarter of a litre).²⁸

Had the wisdom of those recommendations been recognised by the international community, we now might have a system that would be rather similar to the recent bill introduced in Uruguay and the content of the ballot initiatives in Colorado and Washington State. These go even beyond the Dutch coffeeshop model, the first to challenge the limitations of the current UN drug control conventions. In that system the sale of limited amounts of cannabis is allowed for a person above 18 years of age among some other restrictions.²⁹ The supply of cannabis to the coffeeshops is a judicial limbo. Coffeeshop owners have to buy their supply – that they are allowed to sell in limited amounts to consumers – on the illicit market. This rather incoherent arrangement was set in place by the Dutch government in an attempt to stay within the limits of the UN conventions.

However, the international community chose to take another approach and in 1961 it decided to schedule cannabis under the strictest controls in the United Nations Single Convention. The Convention classified narcotic drugs in four schedules. Cannabis is listed twice. It is in Schedule I, as a substance whose properties give rise to dependence and which presents a serious risk of abuse. It is also in Schedule IV, among the most dangerous substances, by virtue of the associated risks of abuse, its particularly harmful characteristics and its extremely limited medical or therapeutic value.

28. Mills (2003), p. 130. Ganja is a term of Sanskrit origin for cannabis, charas is a type of hashish and bhang is a preparation from the leaves and flowers (buds) of the female cannabis plant with a low THC content, smoked or consumed as a beverage.

29. Contrary to what is commonly believed, possession of cannabis in the Netherlands is a statutory offence (use is not prohibited). Coffee shops may sell 5 grams of cannabis, under strict conditions, without facing prosecution and no legal action is taken for possession of small quantities of drugs for personal use. See: *Q&A drugs: A guide to Dutch policy*, a publication of the Netherlands Ministry of Foreign Affairs, 2003. (http://www.minbuza.nl/binaries/en-pdf/pdf/qxadugs2003_en.pdf)

Early attempts at international control

Mindful of such a restrictive dual classification, two related and key questions remain. Was it a conscious decision to schedule cannabis under the most restrictive controls in the 1961 Single Convention and upon what evidence was it based? As the name suggest the Single Convention is a consolidation of a series of multilateral drug control treaties negotiated between 1912 and 1953. Arguably one of the classic historic accounts of international drug control, *The Gentlemen's Club*, devotes a chapter to the issue, *Cannabis: International Diffusion of a National Policy*.³⁰ As the title indicates, national controls and prohibition from some parts of the world preceded international control measures, which subsequently were internationalised and then led to national bans in other countries.

As we noted above, even before cannabis became subject of the international drive to control psychoactive substances, two very distinct models existed: (1) a prohibition model that was largely ineffective; and (2) a more sophisticated model of regulation that was largely unknown and barely implemented. Even in Egypt the ban on cannabis met with reconsideration. In 1892, Caillard Pasha, Egypt's British general director of customs, noted that Egypt's prohibition had generated trafficking networks supplying the country with all the hashish the clandestine market needed. This was in addition to a series of negative consequences such as illicit smoking dens, smuggling and corruption. He advocated that the Egyptian government should duplicate policies of control and restriction that had been put in place in India with the aim of containing excessive use and allow for moderate consumption. Revenue derived from licences and taxation had increased in India, he argued, while consumption had diminished.³¹

As with opium, the transnational nature of the market made it clear that prohibition would require a set of international measures to control illicit supply. It was only a matter of time before cannabis would be included in the international efforts to curb availability. Subsequently, cannabis became caught up in the preparations for the International Opium Conference in 1911 in The Hague (the Netherlands). The Hague Conference – building upon the outcomes of the 1909 Shanghai Conference led to the 1912 International Opium Convention. As the titles suggest, the instruments focused on opium and opiates, but extended their purview to other substances as the negotiations proceeded. Indeed, at the Conference Italy raised the issue of international cannabis control. This was a move motivated by hashish smuggling in its North African colonies in present-day Libya, territory taken over from Turkey during a war in 1911.³²

The Conference delegates were rather bewildered by the introduction of cannabis to the discussions. Pharmaceutical cannabis products were still widespread in the early 20th century and the participants did not have anything to build on since there was a

30. Bruun, Ketill; Lynn Pan & Ingemar Rexed (1975), *The Gentlemen's Club: International Control of Drugs and Alcohol*, Chicago/London: The University of Chicago Press, pp. 181-203; <http://www.drugtext.org/The-Gentlemen-s-Club/13-cannabis-international-diffusion-of-national-policy.html>

31. Kozma (2011)

32. Bruun, Pan & Rexed (1975), pp. 181-82; Mills (2003), pp. 154-56. Italy only consented to the conference after its request that the trade in Indian hemp and hashish be considered was agreed to. See: Taylor, Arnold H. (1969), *American Diplomacy and the narcotics traffic 1900-1939*, Durham (NC): Duke University Press; <http://www.drugtext.org/Table/American-Diplomacy-and-the-narcotics-traffic/>

lack of statistics on international trade and even a clear scientific definition of the substance. Delegates also did not have any instructions from their governments on how to deal with the issue. The chairman of the Conference, Jacob Theodor Cremer of the Dutch Ministry of Foreign Affairs, suggested that it would be sufficient for countries to deal with cannabis internally and that it might not even be part of the international drug control problem.³³ No other nations except for the United States supported Italy, whose own delegation only attended the first day of the Conference. The most the US was able to obtain was the resolution in the addendum of the Convention:³⁴

The Conference considers it desirable to study the question of Indian hemp from the statistical and scientific point of view, with the object of regulating its abuses, should the necessity thereof be felt, by international legislation or by an international agreement.³⁵

One of the delegates at the Conference was Hamilton Wright, a State Department official who not only coordinated the international aspects of US drug control policy, but was also responsible for drafting domestic legislation. He had tried to include cannabis in a bill that was introduced in the US Congress in 1910, because if one ‘dangerous’ drug would be effectively prohibited, habitual users would switch to another substance. In anticipation of the shift from opiates and cocaine, cannabis should be prohibited, Wright reasoned, and consequently as many psychoactive substances as possible should be banned.³⁶ He believed in “*a hydraulic model of drug appetites*,”³⁷ a kind of reverse gateway theory that would become popular in later years. His bill – a precursor of the Harrison Narcotics Tax Act of 1914 that would effectively control opiates and cocaine – was defeated, mainly because of the opposition of the pharmaceutical industry, and cannabis would remain out of US federal legislation until 1937.

The 1912 Hague Convention called upon signatories to license manufacturers, regulate distribution and, in the case of opium, halt exports to those jurisdictions that prohibited its import, prompted by the fear among the participating states that unregulated trade in heroin, morphine and cocaine would lead to an increase in domestic drug use. Most states displayed a general reluctance to penalise non-medical and non-scientific use of certain psychoactive substances, and the treaty was predominantly concerned with a supply-oriented regulation of the licit trade and the availability for medical purposes.³⁸

Cannabis and the League of Nations

The supply-side approach was continued under new multilateral structures developed in the wake of the First World War. Having assumed responsibility for the issue, including supervision of the 1912 Hague Convention, the League of Nations moved to strengthen transnational aspects of the emergent international drug control system and

33. Mills (2003), pp. 154-56

34. Musto, David F. (1999). *The American Disease: Origins of Narcotic Control*, New York: Oxford University Press (Third Edition), p. 51; <http://www.drugtext.org/Table/The-American-Disease/>

35. Bruun, Pan & Rexed (1975), p. 182

36. Musto, David F. (1972), ‘The History of the Marihuana Tax Act of 1937’, *Arch. Gen. Psychiat.* Volume 26, February 1972

37. Musto (1972)

38. Bewley-Taylor, David and Martin Jelsma (2011), *Fifty Years of the 1961 Single Convention on Narcotic Drugs: A Reinterpretation*, TNI Series on Legislative Reform of Drug Policies Nr. 12, March 2011; <http://www.undrugcontrol.info/images/stories/documents/dlr12.pdf>

institute controls over a wider range of drugs. The League of Nations established the Advisory Committee on Traffic in Opium and Other Dangerous Drugs, which was still mainly concerned with opium, morphine and cocaine. Cannabis had almost been forgotten, but in November 1923 a letter by the Union of South Africa put it back on the agenda.

The South-Africans wrote that from their perspective “*the most important of all the habit-forming drugs*” was cannabis, which was not included on the list of the Convention.³⁹ South Africa had been among the first states to control the substance. A law had been passed in 1870 that was tightened in 1887, prohibiting the use and possession of cannabis by Indian immigrants, principally in response to the perception that the use of *dagga* – as cannabis was known in the region – was threatening white rule.⁴⁰ National prohibition of the cultivation, sale, possession and use of cannabis had been proclaimed in South Africa in June 1922. The Advisory Committee decided to ask governments for information on the production, use and trade in the drug in a circular letter in November 1924. Meanwhile, a Second Opium Conference had been convened that would alter the legal status of cannabis significantly.

The Conference gathered in November 1924 in Geneva to discuss measures to be taken to implement the 1912 Opium Convention and set maximum limits on the production of opium, morphine and cocaine and restrict the production of raw opium and coca leaf for export for medicinal and scientific purposes. However, on the second day of the meeting, Mohamed El Guindy, the delegate from Egypt, a country that had recently acquired limited independence from the United Kingdom, suddenly suggested the inclusion of cannabis in the deliberations and moved to bring it under the scope of the Convention by including it to the list of narcotic drugs. According to El Guindy in his opening words hashish was “*at least as harmful as opium, if not more so.*”⁴¹ He was supported by Turkey and Greece – countries that had banned cannabis already, although with limited success. Despite the British delegation’s attempts to sidetrack the Egyptian proposal on procedural grounds – cannabis was not on the official agenda of the meeting – El Guindy insisted, and submitted an official proposal.

In his speech presenting the proposal, he painted a horrific picture of the effects of hashish. Although he conceded that taken “*occasionally and in small doses, hashish perhaps does not offer much danger,*” he nevertheless stressed that once a person “*acquires the habit and becomes addicted to the drug ... it is very difficult to escape.*” He then boldly stated that a person “*under the influence of hashish presents symptoms very similar to those of hysteria*” and that “*intellectual faculties gradually weaken and the whole organism decays,*” and claimed that “*the proportion of cases of insanity caused by the use of hashish varies from 30 to 60% of the total number of cases occurring in Egypt.*” Cannabis not only led to insanity, according to El Guindy, it was also a gateway to other drugs, and vice versa: if it was not included on the list with

39. Mills (2003), p. 160

40. Ballotta, Bergeron and Hughes (2009); Du Toit, Brian M. (1977), ‘Historical and cultural factors influencing cannabis use among Indians in South Africa’, *Journal of Psychedelic Drugs*, Vol 9(3), Jul-Sep 1977, pp. 235-246

41. Mills (2003), p. 167

opium and cocaine, he was sure that cannabis would replace them and “*become a terrible menace to the whole world.*”⁴²

Most countries at the Conference had little to no experience with cannabis and were inclined to rely upon those that did, notably Egypt, Turkey and Greece. The Egyptian ban on cannabis had affected the entire East Mediterranean and beyond. Country reports to the League of Nations Advisory Committee show that Greece, Cyprus, Turkey, Sudan, Syria, Lebanon and Palestine, were called upon to assist Egypt’s law enforcement authorities by restricting cultivation and trade under their jurisdiction. Most of it was smuggled into Egypt to meet the unwavering demand of Egyptian consumers.⁴³ El Guindy’s proposal was certainly motivated by those failing efforts to stem the illicit supply to Egypt.

However, El Guindy offered little to no evidence in his emotional speech to back up his audacious claims about the effects of hashish, and delegates were unprepared to contradict them. The assertion that 30 to 60% of insanity cases could be attributed to hashish was very questionable, if not a complete exaggeration. The 1920-21 annual report of the Abbasiya Asylum in Cairo – the larger of Egypt’s two mental hospitals – recorded 715 admissions, of which only 19 (2.7%) were attributed to hashish, considerably less than the 48 attributed to alcohol. Moreover, even the modest number of cases attributed to cannabis were “*not, strictly speaking, causes, but conditions associated with the mental disease,*” according to the report.⁴⁴

El Guindy’s disquieting description of the dangers of hashish did, however, cause a moral panic among most delegates who applauded his intervention, although some had to admit to their ‘quite limited’ knowledge on the issue. Others did keep their calm. The delegates from India, the United Kingdom and France expressed sympathy for the distinguished Egyptian delegate, but argued that, as his government had failed to give prior notice to the secretariat, the Conference was not competent to apply the provisions of the 1912 Hague Convention to hashish. The issue was referred to Sub-Committee F for further study. Curiously, the Indian and British delegates did not mention the report of the 1895 Indian Hemp Drugs Commission, which as discussed had given a much more nuanced picture of the benefits, risks and harms of cannabis.

The referral to the Sub-Committee did not deter El Guindy and he cleverly lobbied to produce a paragraph mainly written by himself:

The use of Indian hemp and the preparations derived therefrom may only be authorised for medical and scientific purposes. The raw resin (charas), however, which is extracted from the female tops of the *cannabis sativa*, together with the various preparations (hashish chira, esrar, diamba, etc.) of which it forms the basis, not being at present utilised for medical purposes and only being susceptible of utilisation for harmful purpose, in the same manner as other narcotics, may not be produced, sold, traded in, etc., under any circumstances whatsoever.⁴⁵

42. Kendell (2003); Mills (2003), pp. 169-71; United Nations Office on Drugs and Crime (UNODC) (2009), *A century of international drug control*, pp. 54-55; http://www.unodc.org/documents/data-and-analysis/Studies/100_Years_of_Drug_Control.pdf

43. Kozma (2011), quoting: *Smuggling of narcotics (hashish) from Greece, Syria and Turkey into Port Said and Alexandria*, FO 141/470/3, a note by Hunter Pasha, 29 Dec. 1913.

44. Kendell (2003)

45. Mills (2003), p. 173

The Sub-Committee reported in favour of the complete prohibition of cannabis. Only three – the United Kingdom, India and the Netherlands – of the sixteen nations that were represented in the committee opposed such a drastic step.⁴⁶

The text of paragraph 6 was controversial and the British and Indian delegates attached reservations. The paragraph did not stop at restricting international trade to prevent trafficking, but also interfered in domestic policy and legislation; a provision deemed at the time to go too far. The US had wanted to introduce similar provisions for opium, but they were blocked by other delegations and had left the Conference in anger. Consequently, the recommendations proposed by El Guindy were diluted significantly by the drafting committee for the new Convention, despite, according to the chairman of the Sub-Committee, the “*somewhat uncompromising insistence*” of El Guindy – a public slap on the wrist uncommon in the diplomatic world. The Conference, therefore, decided to include cannabis in the International Opium Convention of 1925, under a limited regime of international control: prohibition of cannabis exportation to countries where it was illegal and the requirement of an import certificate for countries that allowed its use.⁴⁷

Thus, without proper consideration of relevant evidence to support the necessity for control and at the request of just one country, Egypt, the Conference decided formally that ‘Indian hemp’ was as addictive and as dangerous as opium and should be treated accordingly, and cannabis was placed under legal international control in the 1925 Geneva Convention.⁴⁸ Although the treaty brought cannabis under control for the first time, it was far less comprehensive than the control of opium/morphine/heroin or coca/cocaine. The Convention only dealt with the transnational dimension of the cannabis trade. The new control regime did not prohibit the production of cannabis; it did not ask to control domestic trade in cannabis; it did not impose measures to reduce domestic consumption; and it did not ask governments to provide cannabis production estimates to the Permanent Central Opium Board (PCOB), established by the treaty to monitor and supervise the licit international trade, which at the time was the main source of supply for illicit markets.⁴⁹

Following the approval of the 1925 International Opium Convention, European countries gradually outlawed cannabis possession and often its use as well (e.g. the UK’s Dangerous Drugs Act, 1928; a revised Dutch Opium Law, 1928; Germany’s second Opium Law, 1929).⁵⁰ These laws went beyond the obligations in the Convention, al-

46. Bewley-Taylor, David (2002), *The United States and International Drug Control, 1909-1997*, London/New York: Continuum, p. 32.

47. The 1925 Convention included the following provisions in a separate chapter on Indian Hemp (Chapter IV). Article 11 §1 stated: “In addition to the provisions of Chapter V [Control of International Trade] which shall apply to Indian hemp and the resin prepared from it, the Contracting Parties undertake: (a) To prohibit the export of the resin obtained from Indian hemp and the ordinary preparations of which the resin forms the base ... to countries which have prohibited their use, and in cases where export is permitted, to require the production of a special import certificate issued by the Government of the importing country stating that the importation is approved for the purposes specified in the certificate and that the resin or preparations will not be re-exported ...” Article 11 §2 established the general rule: “The Contracting Parties shall exercise an effective control of such a nature as to prevent the illicit international traffic in Indian hemp and especially in the resin”. See: UNODC (2009).

48. Kendell (2003)

49. UNODC (2009); Bewley-Taylor and Jelsma (2012a)

50. Ballotta, Bergeron and Hughes (2009)

though there had been no problems with cannabis use in those countries at the time. The issuing of bans at the national level on a substance that had been demonized on the basis of questionable evidence would set in motion a process of stricter controls internationally. While Egypt had been a minor player in the diplomatic efforts to control cannabis – but nevertheless had been able to force the issue on the international agenda – now more powerful countries became entangled in the process of increasing criminalisation and would, over time, influence the quest for international measures to maintain national prohibitions.

At the League of Nations the issue didn't stir much further interest after the 1925 Geneva Convention, except for the occasional report sent to the Advisory Committee. In the 1930s the Committee began to pay increasing attention to cannabis, under pressure from Egypt, but especially from the US and Canada. At its 19th session in 1934 this was made more explicit. A report had been produced that estimated that there were 200 million users of cannabis worldwide, although it is unclear how that figure came about. The Egyptian delegation even asked for "*the worldwide outlawing of the cannabis indica plant.*" Other delegations were less impressed with the information that had been provided and the poorly substantiated statements at the session. Consequently, the issue was referred to a Sub-Committee. Once again, the report of the 1895 Indian Hemp Drugs Commission was completely ignored.⁵¹

Not that other views on the alleged horrific effects of cannabis were not available. In a New York Times article published in 1926 El Guindy's allegations against cannabis had been reviewed critically. The article did quote the 1895 Indian Hemp Drugs Commission report, saying that the "*alleged cases of insanity due to ganja smoking were for the most part not clearly proved; those who indulged in crime were not driven to it by excessive use of this drug, but when excesses were noted they were usually connected with other vices, such as alcohol and opium. Not a single medical witness could clearly prove that the habit gave rise to mental aberration.*"⁵²

The article also mentioned research among US military personnel in the Panama Canal Zone with 17 volunteers smoking marijuana under medical supervision. The investigating committee reported that the "*influence of the drug when used for smoking is uncertain and appears to have been greatly exaggerated*" and concluded that "*there is no medical evidence that it causes insanity,*" noting that "*there is no evidence that the marijuana grown locally is a habit-forming drug ... or that it has any appreciable deleterious effects on the individuals using it.*" The committee recommended that "*no steps be taken by the authorities of the Canal Zone to prevent the sale or use of marijuana, and that no special legislation ... was needed.*"⁵³

51. Bruun, Pan & Rexed (1975), p. 185-87; Mills, James H. (2013), *Cannabis nation: Control and consumption in Britain, 1928-2008*, Oxford University Press, p. 44.

52. *Marijuana Smoking Is Reported Safe*, The New York Times, November 21, 1926. There was an interest in the issue since a year before a group 'said to be Mexicans' had been growing marijuana in public parks in New York City that had caused quite an uproar followed by features in 'Sunday newspapers' about the "*fearful consequences of using this allegedly habit-forming and dreadful weed.*"

53. The research continued of and on well into the 1930s, due to ongoing habit of marijuana smoking among the soldiers, but did not significantly alter the conclusions. Commanders unduly emphasized the effects of marijuana and delinquency, "*disregarding the fact that a large proportion of the delinquents are morons or psychopaths, which conditions of themselves would serve to account for delinquency.*" Marijuana use among soldiers was prohibited. See: 'Marijuana Smoking in Panama', *The Military Surgeon*, Vol. 73, July-December 1933; <http://www.drugtext.org/Panama-Zone-Report/marijuana>

Enter the United States

Meanwhile cannabis had become an issue in the United States. Since the late 1920s a moral panic relating to Mexican labour immigration and violence supposedly incited by marijuana use among Mexicans had been building, fed by shocking and sensationalist newspaper reports. As a result, requests were made to include marijuana in the Harrison Act. Nevertheless, the Federal Bureau of Narcotics (FBN), established in 1930 and headed by Commissioner of Narcotics Harry J. Anslinger until 1962, at first minimized the problem arguing that cannabis control should be vested at the state level through the Uniform State Narcotic Drug Act of 1934 – to make the law uniform in the various states with respect to controlling the sale and use of narcotics – instead of by the federal government. He considered heroin to be a much more dangerous substance and, already a shrewd bureaucratic player, was cautious about committing the FBN to the control of a substance that grew freely across many, particularly southern, US states. However, pressure to do something mounted; first with local police forces in affected states, then to the governors, and from the governors to the Secretary of the Treasury – Anslinger's boss.⁵⁴

Enacting a federal law in the United States is easier said than done due to constitutional restraints that gives the individual states a substantial sway in their domestic affairs. The Bureau's attempts to find grounds on which to design a federal law were initially based on the treaty-making powers of the federal government as the authority that could introduce an anti-marijuana statute.⁵⁵ That might explain the increased activity of the US at the Advisory Committee. Anslinger's predecessors, the aforementioned Hamilton Wright (in 1912) and Stephen Porter (in 1925) had used the same tactics *“to enforce domestic legislation in time to underline the seriousness of US intentions at international meetings and thereby increase their capacity to influence international decisions; at the same time, they used international obligations as an argument for domestic legislation.”*⁵⁶

Although the US was formally not a member state of the League of Nations and was constantly dissatisfied with the lenient approach of the European colonial powers that had a financial interest in the production of opium and coca and the manufacturing of its derivatives morphine, heroin and cocaine, they kept an extra-official presence as an observer in the deliberations. One of the reasons the United States had withdrawn from the Geneva Conference of 1924-1925 was the refusal of the producing countries to commit to specific measures to restrict the production of raw opium and coca leaves to the medical and scientific needs. In the American view, this accounted for a major gap in the international system of control. Limitation of the available supplies

smoking-in-panama.html73, July-December 1933; <http://www.drugtext.org/Panama-Zone-Report/marijuana-smoking-in-panama.html> This study built upon the Panama Canal Zone Military Investigations (1916-1929) comprising a succession of military boards and commissions in marijuana smoking by US military personnel stationed in the Zone.

54. Musto (1999), pp. 221-23. However, other studies sustain that prior to the efforts of the FBN to publicize the evils of marijuana in the mid-1930s, the drug was virtually ignored on the national level. See: Himmelstein, Jerome L. (1983), *The Strange Career of Marijuana: Politics and Ideology of Drug Control in America*, Greenwood Press.

55. McWilliams, John C. (1990), *The Protectors: Harry J. Anslinger and the Federal Bureau of Narcotics, 1930-1962*, Newark: University of Delaware Press, pp. 66-7

56. Bruun, Pan & Rexed (1975), p. 139; Bewley-Taylor (2002), p. 158

could not be achieved unless control began at the source, with restricting the cultivation of the plants.⁵⁷

The US tried to include stricter measures, including for cannabis, at the Conference for the Suppression of the Illicit Traffic in Dangerous Drugs in Geneva in June 1936. The Conference was convened to address the increasing problem of drug trafficking, an unintended consequence of the emerging drug control regime. The US proposal for the draft convention included the obligation of severe penalties on anyone promoting or engaging in cultivation, production, manufacture, and distribution for non-medical and non-scientific purposes. Other delegations did not want to go down that road and in an action reminiscent of the 1925 Geneva Conference, the US delegation walked out of the meeting, dissatisfied with limited coverage of the convention. The US had hoped to secure a constitutional basis, by treaty, for the regulation by the federal government of the cultivation and production of opium and cannabis⁵⁸ – and “perhaps individual use as well”⁵⁹ – but considered the 1936 Convention for the Suppression of the Illicit Traffic in Dangerous Drugs to be “*a retrograde step*” that was also inadequate for cannabis.⁶⁰

Nonetheless, shortly after his return to Washington Anslinger and the Treasury Department went ahead with preparations for the passage of a federal bill to control cannabis. This included the Commissioner engaging in what was effectively a scare campaign on both Capitol Hill and in the media. Following what was by now a well practiced approach, in April 1937, for example, he assured a House of Representatives committee that under the influence of marijuana “*some people will fly into a delirious rage and may commit violent crimes.*” In a response to a follow up question, he offered his ‘expert’ opinion that the drug was ‘dangerous to the mind and body and particularly dangerous to the criminal type, because it releases all of the inhibitions’.⁶¹ Anslinger’s testimony also included the incredible statement:

Most marijuana smokers are Negroes, Hispanics, jazz musicians, and entertainers. Their satanic music is driven by marijuana, and marijuana smoking by white women makes them want to seek sexual relations with Negroes, entertainers, and others. It is a drug that causes insanity, criminality, and death – the most violence-causing drug in the history of mankind.⁶²

Such views were widely reproduced in radio appearances, public forums, magazine articles and the film *Reefer Madness*. A part from the racist and xenophobic undertone the demonization bordered on the ridiculous. At one point Anslinger even made the connection that marijuana had a strangely exhilarating effect upon the musical sen-

57. Taylor (1969), Chapter 10: American cooperation with the League on the Far Eastern problem and illicit traffic; <http://www.drugtext.org/American-Diplomacy-and-the-narcotics-traffic/chapter-10-american-cooperation-with-the-league-on-the-far-eastern-problem-and-illicit-traffic.html>; Bewley-Taylor and Jelsma (2011a)

58. Taylor (1969), p. 297; Bruun, Pan & Rexed (1975), p. 138

59. McAllister, William B. (2000), *Drug diplomacy in the twentieth century: An international history*, London-New York: Routledge, p. 123

60. *U.S. Remains Aloof On Narcotics Pact*, The New York Times, June 27, 1936; Bewley-Taylor (2001), p. 41

61. McWilliams (1990), p. 70

62. Gerber Rudolph J. (2004), *Legalizing Marijuana: Drug Policy Reform and Prohibition Politics*, Westport, CT: Greenwood Press, p. 9.

sibilities reminding the readers that cannabis had long been used as a component of ‘singing seed’ for canary birds.⁶³

Within this atmosphere, in August 1937 the US federal government approved the Marijuana Tax Act effectively banning cannabis in the country. The law imposed an occupational tax upon importers, sellers, dealers and anyone handling the drug. The provisions of the Act were not designed to raise revenue, or even regulate the use of marijuana. The purpose was to provide the legal mechanisms to enforce the prohibition of all use of marijuana.⁶⁴ This was the case even though debate for the passage of the bill in the House of Representatives lasted only half an hour and contained no medical or scientific data. Reflecting the laxity and indifference of discussion, Texas Congressman Sam Rayburn responded to a question about the Bill’s provisions by saying “*It is something to do with something that is called marijuana. I believe it is a narcotic of some kind.*”⁶⁵ Before the introduction of the law only four states had enacted prohibitions against non medical usage of marijuana – California (1915), Texas (1919), Louisiana (1924), and New York (1927) – but in 1937 46 of the nation’s then 48 states had banned the substance.

The US reinforced its desire to influence international control and head an international anti-cannabis movement. It therefore presented extensive documentation to the Sub-Committee of the League of Nation’s Advisory Committee, in which it claimed to prove a link between crime, dementia and cannabis, whilst promoting the gateway theory that cannabis use leads to heroin addiction. Anslinger declared in 1938 before the Advisory Committee: “... *the drug (marihuana) maintains its ancient, worldwide tradition of murder, assault, rape, physical and mental deterioration. The office’s archives prove that its use is associated with dementia and crime. Thus, from the point of view of policing, it is a more dangerous drug than heroin or cocaine.*”⁶⁶

In contrast, one of the most important documents finally produced by the Sub-Committee insisted that there was no link between violence and cannabis in Africa. The Sub-Committee’s work was completed in December 1939. The documents produced showed awareness of cultural differences in cannabis use and an appreciation of the difficulties to be expected in efforts to control the substance, despite the fact that the Indian situation was largely overlooked in the research effort. Amongst the conclusions were the following: more studies on the resin content of cannabis were necessary, and on the verification of cannabis’ principal assets; on the causes of addiction and its connection with dementia and crime, and on the growing phenomenon of substitution of cannabis with heroin that was occurring in North Africa, Egypt and Turkey. In an earlier report an increase in heroin use in Tunisia was attributed to cannabis

63. *Marijuana, Assassin of Youth*, by H.J. Anslinger and C.R. Cooper, *The American Magazine*, July 1937; <http://www.redhousebooks.com/galleries/assassin.htm>

64. McWilliams (1990), pp. 67-80. The act only required purchase of a US\$1 tax stamp by all who possessed, traded, or prescribed cannabis. “*But the devil was in its associated 60 pages of regulations, which detailed the application and maintenance process for obtaining the stamp. Doctors who wished to prescribe it had to give the FBN extensive information, including the names and addresses of patients, circumstances surrounding the prescriptions, and so on. Frequent reports and Treasury Department inspections were required, and errors were punishable by a fine of \$2,000 (about \$25,000 in today’s dollars), a five-year imprisonment, or both.*” See: Geller (2007).

65. McWilliams (1990), p. 75; see also: Musto (1999), pp. 228-229

66. H.J. Anslinger, *Enforcement of the Narcotic Drug Laws in the USA*, statement to League of Nations’ Opium Advisory Committee, May 14, 1938.

control: “At present, total suppression (at least in countries where cannabis use is a very ancient custom) would result in an increase in addiction to manufactured drugs, which are far more dangerous...”⁶⁷

The work of the League of Nations ended with the outbreak of the Second World War. In the preceding years the process of ever increasing controls had been driven by knee-jerk reactions and the application of increasingly potent medicines to cure an imaginary disease; a process that took place without evaluation of the effectiveness and potential negative consequences of the therapy. This amplified the risk of iatrogenic policy whereby the cure might end up becoming worse than the perceived disease itself. When the United States – until the mid-1930s the most ardent advocate of more stringent controls on psychoactive substances other than cannabis – also entered the stage, the parameters for international cannabis control, and in its slipstream stricter national laws, changed significantly. However, examples of other control models remained. In India, Tunisia and French Morocco, for example, systems of controlled sales had been adopted.⁶⁸

Towards the 1961 Single Convention

Along with the creation of the United Nations, the Commission on Narcotic Drugs (CND or Commission) was established replacing the Advisory Committee of the League of Nations. During its first meeting in 1946 future discrepancies on cannabis were already beginning to show. Medical opinions from the US and Mexico were presented confirming the absence of significant health related harms from cannabis use and its minimal influence on criminal behaviour. The Mexican representative claimed that too many restrictions on cannabis could lead to it being substituted by alcohol, which would have worse consequences. The Indian delegate declared that Indian people used *ganja* and *bhang* in moderation. The PCOB was also of the opinion that the situation required “*drastic international action.*”

The US representative, Commissioner Anslinger, insisted on proving the connection between cannabis use and crime, however. He launched an attack against a recent report of certain United States physicians on the subject describing it as extremely dangerous. The report he referred to, it seems, was the La Guardia report of 1944.⁶⁹ Commissioned by New York’s Mayor, Fiorello La Guardia, its goal was to provide a thorough, impartial and scientific analysis of marijuana smoking among the city’s Latin and black population⁷⁰ As such it was the product of an inter-disciplinary committee comprising physicians, sociologists, psychiatrists, pharmacists and city health officials.⁷¹

Flying in the face of the scare stories still being circulated in the press and other media by the FBN, after 5-years in the making the report contradicted many of the allegations put forward by US officials about the dangers of cannabis. Among other

67. Bruun, Pan & Rexed (1975), pp. 188-195

68. J. Bouquet (1951), ‘Cannabis’, United Nations *Bulletin on Narcotics*, Volume 3, Issue 1; http://www.unodc.org/unodc/en/data-and-analysis/bulletin/bulletin_1951-01-01_1_page005.html

69. Bruun, Pan and Rexed (1975) , p. 196

70. McWilliams (1990), pp. 102-103

71. Brecher, Edward M. (1972), *Licit and Illicit Drugs: The Consumer ,Unions Report on Narcotics, Stimulants, Inhalants, Hallucinogens and Marijuana – including Caffeine, Nicotine and Alcohol* (Mount Vernon, New York: Consumers Union), pp. 451-452

things, it concluded that the “*practice of smoking marijuana does not lead to addiction in the medical sense of the word*” and that the drug was “*not the determining factor in the commission of major crimes.*” Moreover, it emphasized that “*the publicity concerning the catastrophic effects of marijuana is unfounded*”. Rather, the report stated, “*There [is] no direct relationship between the commission of crimes of violence and marihuana ... marihuana itself has no specific stimulant effect in regard to sexual desires*” and that “*The use of marihuana does not lead to morphine or cocaine or heroin addiction.*” In light of such findings, it called for an intelligent approach to the drug.⁷² This did not materialize. Instead, and unsurprisingly bearing in mind its outright contradiction of the myths advanced by his Bureau, the report was the target of zealous attacks from Anslinger.⁷³

While overseeing the development of a number of international treaties, the League of Nations had been unable to secure the global prohibition of certain drugs for non-medical and non-scientific purposes in the absence of an international normative consensus about drug use. The voluntary nature of adherence to the conventions and the lack of a hegemonic power that was able, and crucially, willing to coerce nations to adhere to stringent control policies ensured that the pre-UN framework had more of a regulatory character, one concerned predominantly with ‘restrictive commodity agreements’.⁷⁴ This was about to change. The end of the Second World War left the United States as the dominant world power. As such Washington possessed the ability to ‘persuade’ other states to adopt stricter policies.⁷⁵ In relation to cannabis specifically, this shift in power manifested itself in a departure from the consideration of impartial evidence on the benefits, risk and harms of cannabis and its potential medical usefulness towards providing biased evidence to support a pre-determined decision to prohibit the substance. For example, while a secretariat paper resumed the work of the Sub-Committee from the 1930s, any reference to the La Guardia report were missing. The explanation for this oversight was simple: it had not been submitted by the US.

In 1948 the recently formed UN Economic and Social Council (ECOSOC) approved a US drafted and CND sponsored resolution that requested the UN Secretary General to prepare a draft convention to replace the existing treaties that had been agreed since The Hague Convention of 1912. Owing much to Anslinger’s endeavours work on a kind of ‘single’ or ‘unified’ treaty had begun. The new convention was to have three core objectives; to limit the production of raw materials, to codify the existing conventions into one convention and to simplify the existing drug control apparatus. Between 1950 and 1958, the nascent document went through three drafts.⁷⁶

A first draft of the future single convention was presented in February 1950 by the CND Secretariat. The proposals for cannabis were drastic. The draft text incorporated two alternative approaches, which equally held that recreational cannabis use needed

72. New York Academy of Medicine (1944), *The Marihuana Problem in the City of New York*, Mayor’s Committee on Marihuana, City of New York (La Guardia Committee Report); <http://drugtext.org/Table/LaGuardia-Committee-Report/> and Woodiwiss, Michael (1988), *Crime Crusades and Corruption: Prohibitions in the United State, 1900-1987*, London: Pinter, pp. 58-59

73. McWilliams (1990), pp. 104-105

74. May, H. L. (1948). Narcotic drug control – development of international action and the establishment of supervision under the United Nations. *International Conciliation*, 441, p. 350

75. Bewley-Taylor (2002), p. 47

76. Bewley-Taylor and Jelsma (2011a)

to be rigorously discouraged. The first alternative worked on the conjecture that cannabis had no legitimate medical use that could not be met by other ‘less dangerous substances’. With the exception of small amounts for scientific purposes, the production of cannabis would be prohibited completely.⁷⁷

The second option recognized that cannabis did have legitimate medical purposes. It should be produced and traded exclusively by a state monopoly only for medical and scientific ends. To ensure that no cannabis leaked into ‘illicit traffic’ a range of measures, such as state-run cultivation and the uprooting of wild plants were proposed. In countries with significant traditional recreational use, ‘a reservation’ could allow production on the strict condition that the reservation would “*cease to be effective unless renewed by annual notification ... and accompanied by a description of the progress in the preceding year towards the abolition of such non-medical use and by explanation of the continued reasons for the temporary retention of such use.*”

No agreement could be reached, however, and the attempt to take decisive action on cannabis by the Secretariat stalled. More information was needed before agreement was likely as “*a rigid limitation of the use of drugs under control to exclusively medical and scientific needs does not sufficiently take into consideration long established customs 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.*”⁷⁸ The draft claimed boldly that all non-medical consumption of cannabis was harmful and recommended that countries where traditional recreational use was common should be obliged to tackle the habit among their people, denying that social use of cannabis in many developing countries could be seen as comparable to the social use of alcohol in the developed world at the time.⁷⁹ The bias towards Western intoxicants was described in 1992 by Hans Halbach, one-time head the WHO Section on Addiction Producing Drugs (1954-1970) in the following terms: “*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.*”⁸⁰

By deferring cannabis for further study the issue risked ending up in the same indecisive phase as in the pre-war period under the auspices of the League of Nations. The dominant position of the US and the emergence of what historian McAllister has called an ‘inner circle’ of drug control advocates at the UN in the late 1940s and early 1950s who were determined to set a ‘radical’ agenda on questions related to narcotics ensured this was not the case, however.⁸¹ With regard to cannabis, the crucial issue was whether the substance had any justifiable medical use. The body mandated to decide on medical use was the WHO Expert Committee on Drugs Liable to Produce Addiction. In 1952 the Committee declared that “*cannabis preparations are practically obsolete. So far as it [the Committee] can see, there is no justification for the medical*

77. Mills (2013), pp. 97-98

78. Mills (2013), p. 98, quoting E/CN.7/216, Report of the Commission on Narcotic Drugs (Fifth Session)

79. Bewley-Taylor and Jelsma (2011a)

80. Conversation with Hans Halbach, *British Journal of Addiction* (1992) 87, 851-55.

81. McAllister (2000), pp. 156-57; see also Bruun, Pan and Rexed (1975), p. 124-25

use of cannabis preparations.” The one paragraph verdict was not substantiated with any evidence.⁸²

The individuals involved can perhaps explain this. The Secretary of the Committee was Pablo Osvaldo Wolff, the head of the Addiction Producing Drugs Section of the WHO (1949-1954). Wolff was part of the ‘inner circle’ of control advocates and described as an American protégé.⁸³ Anslinger wrote the preface of the English version of Wolff’s booklet *Marijuana in Latin America: The Threat It Constitutes*, published in 1949 as a polemic against the La Guardia report, which as noted above, had found in contrast to Anslinger and Wolff’s opinion that the use of marijuana did not lead to mental and moral degeneration. The booklet typically supported the earlier claims and arguments of the US government during the Advisory Committee days, such as the estimate that there were 200 million cannabis addicts in the world.⁸⁴ The booklet was “*primarily a diatribe against marihuana ... practically devoid of hard data*”⁸⁵ that provided little to no scientific evidence regarding the alleged association between cannabis and crime.

Rather than a credible study, it was a pamphlet against cannabis with extravagant declarations about its alleged menacing effect: “*With every reason, marihuana... has been closely associated since the most remote time with insanity, with crime, with violence, and with brutality,*” Wolff concluded. The bombastic language shed considerable doubt on the scientific reliability and impartiality. It stated, for example, that cannabis “*changes thousands of persons into nothing more than human scum,*” and that “*this vice... should be suppressed at any cost.*” Cannabis was labelled as a “*weed of the brutal crime and of the burning hell,*” an “*exterminating demon which is now attacking our country.*” Users were referred to as addicts who’s “*motive belongs to a strain which is pure viciousness.*”⁸⁶

Wolff also distorted available evidence by cherry picking from reports to support his position. For instance, he claimed that “*an American commission which studied marijuana addiction in the Panama garrisons found among the addicts individuals who were under charges of violence and insubordination.*” The commission Wolff referred to was the military inquiry in the Panama Canal Zone mentioned above. This, it will be recalled, had in fact reached the diametrically opposite conclusion based on evidence that acts of violence and insubordination had little to no relation to cannabis, but rather was caused by alcohol.⁸⁷ According to Wolff there was also “*no medical*

82. Bruun, Pan and Rexed (1975), p. 196; Expert Committee on Drugs Liable to Produce Addiction, *Third Report*, World Health Organization, Geneva, March 1952; http://whqlibdoc.who.int/trs/WHO_TRS_57.pdf

83. King, Rufus (1974). *The drug hang-up: America’s fifty-year folly*. Springfield: Charles C. Thomas; <http://www.drugtext.org/The-Drug-Hang-Up/twelve-balancing-the-grass-account.html>

84. Bruun, Pan & Rexed (1975), pp. 124. The booklet was originally published as an article in Spanish as ‘La marihuana en la America Latina; la amenaza que constituye’, *Revista de la Asociacion Medica Argentina*, Buenos Aires, 1948.

85. Kalant, Oriana J. (1968), *An interim guide to the cannabis (marihuana) literature*, Toronto: Addiction Research Foundation, p. 25

86. Goode, Erich (1970), *The Marijuana Smokers*, Basic Books, pp. 231-32; <http://www.drugtext.org/The-Marijuana-Smokers/chapter-9-marijuana-crime-and-violence.html>

87. Kaplan, John (1975), *Marijuana, the new prohibition*, New York: Crowell, pp. 101-02; <http://www.drugtext.org/Marijuana-The-New-Prohibition/iv-marijuana-and-aggression.html>

indication whatsoever that will justify its use in the present day”;⁸⁸ an opinion that was taken onboard by the WHO expert committee’s opinion about cannabis in 1952 of which he was the secretary.

The deliberations in the years 1950-1955 were of paramount importance for the status of cannabis in the future 1961 UN Single Convention on Narcotic Drugs. According to the classic study *The Gentlemen’s Club* in 1955 the CND

... was ready to make a provisional decision to include cannabis in schedule IV of the proposed Single Convention; in other words, to adopt a line of prohibition. While the formal decision was taken later, little material of substance was submitted after 1955 and, despite much talk, no one seriously challenged this position. We may therefore consider 1954 and 1955 as the crucial years for the ultimate decision.⁸⁹

Wolff practically hijacked the opinion of the WHO during these “crucial years”. At the CND meeting in 1953 a study program was approved to describe actual situation and to evaluate existing control regimes in cooperation with the Food and Agriculture Organization (FAO) and the WHO. The importance of a WHO study on the physical and mental effects was stressed. Wolff, representing the WHO, indicated that such a study could be carried out. And when the CND met in 1955 the delegates were confronted with a report, *The Physical and Mental Effects of Cannabis*, written by Wolff himself.⁹⁰ The report was basically an update of his earlier booklet and again was characterized by a one-sided quest to conclude that “*cannabis constitutes a dangerous drug from every point of view, whether physical, mental, social or criminological,*” and “*not only is marihuana smoking per se a danger but that its use eventually leads the smoker to turn to intravenous heroin injections.*”⁹¹

The report is relentless in its insistence to reach that conclusion. Wolff had little space for those who “*are inclined to minimize the importance of smoking marihuana.*”⁹² The literature cited was highly selective and the work of the League in the 1930s was barely acknowledged. There are also serious doubts about the official status of the document. Although the report may be found in files of the WHO, it was not representing the WHO’s official standpoint. The document had not been endorsed by the relevant expert committee and was not mentioned in their reports. Wolff’s successor, Hans Halbach, referred to the report in a letter “*as a working paper for the WHO Secretariat and made available for distribution by the WHO Secretariat.*”⁹³ However, at the CND meeting, the document was clearly regarded as representing the WHO position.

88. Bruun, Pan & Rexed (1975), pp. 196-97

89. Bruun, Pan & Rexed (1975), p. 197

90. E/CN.7/L.916 (1955), United Nations Economic and Social Council, *The Problem of Cannabis*, Commission on Narcotic Drugs, Tenth session, April 1955, transmitting: WHO/APD/56, World Health Organization, *The Physical and Mental Effects of Cannabis*, prepared, on request of the World Health Organization, by Dr P.O. Wolff, formerly Chief, Addiction Producing Drugs Section, 17 March 1955; <http://www.drugtext.org/The-Problem-of-Cannabis/contents.html>

91. Bruun, Pan & Rexed (1975), pp. 198-99

92. Mills (2013), p. 102-03; E/CN.7/L.916 (1955), Relation to Violence and Crime <http://www.drugtext.org/The-Problem-of-Cannabis/relation-to-violence-and-crime.html>

93. Bruun, Pan & Rexed (1975), pp. 198-99; quoting a letter from Halbach to Bureau of Narcotics of 27 October 1965.

Cannabis condemned

The CND reached the verdict that cannabis had no medicinal value at its 1955 meeting after analyzing the minimal and biased documentation presented for this purpose. Curiously nobody questioned this decisive factor. Not even proof that cannabis had a medicinal use in traditional Indian medicine, for example, posed an obstacle to prohibition. India's objections didn't pull much weight in the face of the huge anti-cannabis bloc.⁹⁴ As a result, the third draft of the Single Convention of 1958 included a special section under the heading 'prohibition of cannabis', but opposition from several sides prevented its adoption at the Plenipotentiary Conference that negotiated the draft version at United Nations Headquarters in New York from 24 January to 25 March 1961. This was attended by the representatives of 73 states and a range of international organisations and bodies.

At the Conference India objected because it opposed banning the widespread traditional use of *bhang* made from cannabis leaves with a low psychoactive content that the delegate of India described as a "mildly intoxicating drink" that was "far less harmful than alcohol."⁹⁵ Support came from Pakistan and also Burma, which in a curious interlude at the Conference worried about the supply of cannabis for elephants used in the timber industry (see text box). Other states also pointed out the use of cannabis in some pharmaceutical preparations as well as in indigenous medicine and remarked that it was feasible that future research would reveal more medicinal benefits. Some modifications to the envisaged control regime were accepted. In a rare deviation from the zero-tolerance principle so prevalent at the Conference, the leaves and seeds were explicitly omitted from the definition of cannabis, which now only referred to the 'flowering or fruiting tops of the cannabis plant'. As such, the traditional use of *bhang* in India could continue.

As noted earlier, cannabis was included in Schedule I and in the strictest Schedule IV of the Single Convention. As a result of the double listing cannabis is considered among the most dangerous of all psychoactive substances under international control, along with heroin amongst others. Cannabis, cannabis resin (such as hashish), and extracts and tincture of cannabis are in Schedule I among substances whose properties – in the eyes of the control advocates at the time – have harmful characteristics, risk of abuse and extremely limited therapeutic value. As such they are subject to all control measures foreseen by the Convention.⁹⁶ With regard to Schedule IV, article 2, 5 (b) of the Convention stipulates that any signatory "shall, if in its opinion the prevailing conditions in its country render it the most appropriate means of protecting the public health and welfare, prohibit the production, manufacture, export and import of, trade in, possession or use of any such drug except for amounts which may be necessary for medical and scientific research only." The Convention hereby suggests that because of its inclusion in Schedule IV, Parties should consider to also prohibit cultivation,

94. Bewley-Taylor and Jelsma (2011a)

95. Bewley-Taylor and Jelsma (2011a); quoting E/CONF.34/24 (1964), United Nations Conference for the Adoption of a Single Convention on Narcotic Drugs, New York, 24 January-25 March 1961. *Official records, Volume 1: Summary records of plenary meetings*. New York: United Nations, pp. 58–62). Mills (2013), p. 112

96. Bewley-Taylor, David (2012), *International Drug Control: Consensus Fractured*, Cambridge/New York: Cambridge University Press, p. 154

possession, use, etc., of cannabis for medical purposes and only allow small quantities for medical research.⁹⁷

As a consolidating treaty, the Single Convention retained many of the features of its predecessors from the League of Nations and sustained the indirect approach of earlier treaties, placing obligations on the Parties and then monitoring ‘the execution of that obligation’. The key provision of the Convention is found under General Obligations in Article 4:

The parties shall take such legislative and administrative measures ... (c) 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.

The Single Convention is significant in the history of the international drug control framework because it was the first time that penal provisions were included in a widely accepted treaty.⁹⁸ Article 36, paragraph 1 (a) states:

Subject to its constitutional limitations each party shall adopt such measures as will ensure that cultivation, production, manufacture, extraction, preparation, possession, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of drugs contrary to the provisions of this Convention ... shall be punishable offences when committed intentionally, and that serious offences shall be liable to adequate punishment particularly imprisonment or other penalties of deprivation of liberty.

While use is mentioned in the non-penal Article 4, it is not specifically noted in Article 36, where possession relates to drugs intended for distribution.⁹⁹ Article 33 of the Single Convention deals with possession for personal consumption stating: “*The Parties shall not permit the possession of drugs except under legal authority.*” Again, use is not specifically mentioned, but the article is clearly intended to deter the non-medical and non-scientific use of substances on the basis that use is impossible without possession. As the Commentary to the Single Convention points out, governments may interpret this in different ways and are not necessarily required to punish unauthorised possession as a ‘serious offence.’ They can impose administrative penalties, such as fines or censure, or choose to avoid penalties altogether providing they “*use their best endeavours to prevent this possession by all those administrative controls of production, manufacture, trade and distribution which are required by the Single Convention.*”¹⁰⁰

Although the explicit reference to the complete ‘prohibition of cannabis’ in the original draft version was deleted, the Single Convention did broaden the scope of the regime to include the cultivation of plants. Article 22 of the Single Convention specified the ‘special provision applicable to cultivation’ using a similar phrasing as used for

97. Bewley-Taylor and Jelsma (2011a); Bewley-Taylor (2012), pp. 154-56

98. The provisions in the 1961 Single Convention were largely modelled on the 1936 Trafficking Convention when penal provision were first included, but the relatively moderate nature of the provisions in the 1961 Single Convention led to an agreement that they would not replace the earlier 1936 treaty for the small number of states that chose to apply its stronger provisions. Bewley-Taylor and Jelsma (2011a).

99. UNODC (2009), p. 62; Bewley-Taylor and Jelsma (2011a).

100. United Nations (1973), *Commentary on the Single Convention on Narcotic Drugs, 1961*, New York: United Nations, p. 402

Schedule IV substances: “Whenever the prevailing conditions in the country or a territory of a Party render the prohibition of the cultivation of the opium poppy, the coca bush or the cannabis plant the most suitable measure, in its opinion, for protecting the public health and welfare and preventing the diversion of drugs into the illicit traffic, the Party concerned shall prohibit cultivation.” This means prohibiting cultivation also for medical and scientific purposes, because the requirement to prohibit cultivation for other purposes is the basic premise of the treaty. The only exception is that does “not apply to the cultivation of the cannabis plant exclusively for industrial purposes (fibre and seed) or horticultural purposes” (Article 28, §2).

In relation to the interpretation of Article 22, the Commentary explains that a government “might come to the conclusion that it cannot possibly suppress a significant diversion into the illegal traffic without prohibiting the cultivation of the plant” and that “The decision whether the conditions of article 22 for prohibition exist is left to the judgement, but not entirely to the discretion of the Party concerned.” It goes on to note, “A Government which for many years, despite its efforts, has been unable to prevent large-scale diversion of drugs from cultivation can hardly be of the opinion that prohibition of such cultivation would not be ‘the most suitable measure ... for protecting public health and welfare and preventing the diversion of drugs into the illicit traffic’.”¹⁰¹

If a Party decides not to prohibit cultivation, clear requirements have to make sure that production, for whatever substance, can only take place under certain conditions and only for medical or scientific purposes.¹⁰² These requirements include the obligation to create national agencies. Article 28 covers the control of cannabis for countries that wish to maintain production for their medical and scientific needs. The cultivation of the cannabis is permitted through the system of controls as provided in Article 23 on the control of the opium poppy. Such agencies need to designate the areas in which the cultivation can take place; allow only licensed cultivators to engage in such cultivation; demand that the total crop be delivered to the agency; and give the agency the exclusive right of importing, exporting, wholesale trading and maintaining stocks.

These articles covering legitimate cannabis cultivation are often misunderstood by cannabis reformers who tend to interpret the article to allow for licit cultivation of recreational use as well as long as it takes place under the control of a national agency. They argue that if a Party does not “render the prohibition of the cultivation ... the most suitable measure ... for protecting the public health and welfare,” they are not required to prohibit it and thus can allow cannabis cultivation under state control. However, the letter and spirit of the Convention clearly limits such agencies to medical and scientific purposes, and in the case of cannabis, because of its inclusion in Schedule IV, even suggests that it should be limited to small amount for research only.

The expansion of controls to the cultivation of the raw materials was closely connected to the Single Convention’s aim to abolish traditional uses of the plants. Effective control of cultivation aiming to reduce production for medical and scientific purposes was considered difficult to achieve as long as large-scale local consumption practises of those raw materials continued in the main producing countries. And herein lies one of the fundamental distortions the Single Convention brought into the

101. United Nations (1973), pp. 275–276); Bewley-Taylor and Jelsma (2011a).

102. UNODC (2009), p. 61

international drug control regime. Concerns in the developed world, particularly within the United States,¹⁰³ about non-medical use of derivatives such as heroin and cocaine led to pressure on developing countries to end traditional uses (medicinal, religious/ceremonial and social traditions) of the plants of origin in order to eliminate the source of raw materials. Thus, opium, cannabis and coca leaf were placed under the same controls as extracted and concentrated alkaloids like morphine, heroin and cocaine.¹⁰⁴

Debates at the 1961 Conference ended up in largely unresolved questions about ‘indigenous medicine’, ‘quasi-medical uses’ and ‘traditional uses’ and about the precise definitions of the plants or derived substances that should be placed under control. An unsuccessful attempt was made to find a solution using the phrasing ‘medical, scientific and other legitimate purposes’ originally appearing in the drafts. Several delegations argued that the category of ‘other legitimate purposes’ could in fact be used to include certain traditional uses such as the Indian bhang brew and ‘indigenous medicinal’ uses. No agreement could be found about the term ‘other legitimate purposes’ as it was considered to be confusing and a deviation from the fundamental principle of limitation to medical and scientific purposes only. The exceptions for industrial purposes of cannabis (fibre and seed) were brought under separate articles.

Ultimately the Single Convention did not make any distinctions, in terms of classification or imposed controls, between cannabis and heroin, except for the transitional exemptions allowing countries a period to phase out traditional uses. Social use of cannabis, in many developing countries seen as comparable to the social use of alcohol in the developed world at the time, and chewing or drinking coca in the Andean region, comparable to drinking coffee, were thus condemned to be abolished. As such, Article 49 required the abolition of the non-medical and non-scientific use of cannabis, cannabis resin, extracts and tinctures of cannabis as soon as possible, but in any case within 25 years, regardless of the millenarian use in some countries. With the 1961 Convention entering into force upon achieving the necessary 40 ratifications in December 1964, the 25-year phase-out scheme for cannabis ended in 1989.¹⁰⁵

With the 1961 Single Convention the prohibition of cannabis was secured, driven by a select group of control crusaders in the nascent UN drug control machinery including the WHO at the time. Remarkably, the psychoactive compounds of cannabis were only revealed after the Convention was concluded. Only in 1963, Prof. Raphael Mechoulam and his research partners at the Hebrew University in Israel revealed the structure of cannabidiol (CBD) out of a batch of illegally acquired hashish. By the following year they had isolated delta-9-tetrahydrocannabinol (THC) for the first time, established its structure and synthesized it.¹⁰⁶ The psychoactive compounds came un-

103. Bewley-Taylor (2001), pp. 69-70

104. Bewley-Taylor and Jelsma (2011a)

105. Bewley-Taylor and Jelsma (2011a)

106. Klein Leichman, Abigail (2012), *The Israeli pharmacologist who kick-started marijuana research*, Israel21c, 14 May 2012; <http://israel21c.org/people/the-israeli-pharmacologist-who-kick-started-marijuana-research/> The research in Israel initiated research into medical use of cannabis, resulting in a thriving medical cannabis industry that now covers some 10,000 patients. However, the first true cannabinoids were isolated and described by the Scottish biochemist Alexander R. Todd in 1939 and the American Roger Adams. His extensive 1940 series in the *Journal of the American Chemical Society* served as the primary base of cannabinoid knowledge for decades. On commission from the

der control in the 1971 Convention on Psychotropic Substances. Modelled on the Single Convention and coming into force in August 1976, this was the result of a growing global concern for the harmful effects of ‘psychotropic’¹⁰⁷ substances such as amphetamines, barbiturates and LSD that fell outside the scope of 1961 Convention.

Thus, rather than incorporating psychoactive pharmaceuticals within the amendment procedure for the 1961 Convention, countries chose to establish a related, but separate, convention. While these two efforts should have logically been integrated into a single convention, the developed countries of the West that had imposed strong controls over the cultivation, production and traffic of natural drugs originating in the developing countries, were unwilling to impose the same types of strict control over their own chemical and pharmaceutical industries.¹⁰⁸ Tetrahydrocannabinol (THC), including its isomers and stereochemical variants, is listed in the first of the 1971 Convention’s four schedules, with its use being limited to scientific and ‘very limited medical purposes’. Dronabinol, or delta-9-THC, and its stereochemical variants are currently listed in Schedule II.¹⁰⁹ As with other similarly classified drugs, Parties may permit use and possession in specific cases, industrial purposes for example, providing they apply the measures of control required by the Convention.¹¹⁰

Stricter controls, however, did not eliminate an increasingly lucrative market and drug trafficking networks supplying it. Just as in the 1930s and the 1936 Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, an additional convention was deemed necessary to counter drug trafficking and pursue the earnings from drug trafficking in an effort to remove both the incentive (profit) and the means (operating capital). This resulted in yet another international control mechanism and the development of an anti-money laundering regime, to identify, trace, freeze, seize and forfeiture drug-crime proceeds.¹¹¹ The 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances significantly reinforced the obligation of countries to apply criminal sanctions to combat all the aspects of illicit production, possession and trafficking of drugs.

Article 3 of the 1988 Convention repeats in slightly broader language the penal provisions of article 36 of the Single convention and article 22 of the 1971 Convention. Even though the language is more restrictive and might be regarded as reducing the flexibility of the earlier treaties, a persuasive legal case can be made that the Article 3

FBN in the late 1930s, Adams produced moderately pure cannabidiol and cannabinol from wild hemp. See: Geller (2007).

107. The whole concept of ‘psychotropic’ substances itself was a distortion of the logic behind the control framework, as the term lacks scientific credentials and was in fact invented as an excuse to safeguard the wide range of psychoactive pharmaceuticals included in the 1971 Convention from the stricter controls of the Single Convention. See: Bewley-Taylor and Jelsma (2011a).

108. According to the President of the International Association of Penal Law, Cherif Bassiouni. See: Bassiouni, M. C. (1990), ‘Critical reflections on international and national control of drugs’, *Denver Journal on International Law and Policy*, 18(3), 311–337. See also: McAllister (2000), pp. 226–234.

109. The CND acknowledged the medical usefulness of cannabis when it adopted in 1991 the WHO recommendation to re-schedule dronabinol from Schedule I to the much less stringent Schedule II of the 1971 Convention. Bewley-Taylor and Jelsma (2012).

110. Bewley-Taylor (2012), p. 155

111. See for instance: Blickman, Tom (2009), *Countering Illicit and Unregulated Money Flows: Money Laundering, Tax Evasion and Financial Regulation*, TNI Crime & Globalisation Debate Paper Nr. 3, December 2009; <http://www.undrugcontrol.info/images/stories/documents/crime3.pdf>

§2 still leaves significant scope for deviation from the punitive approach when possession for personal use is concerned. The overall character of the 1988 Convention is focused predominantly on trafficking, in which demand side issues are only marginally dealt with and under distinctly different provisions, which allow for alternative sanctions (Article 3 §4b,c,d). This is pointed out clearly in the Commentary to the 1988 Convention in relation to its Article 3: “*It will be noted that, as with the 1961 and 1971 Conventions, paragraph 2 does not require drug consumption as such to be established as a punishable offence.*”¹¹² Consequently, even after the widespread acceptance of the 1988 Convention and its coming into force in 1990, a significant degree of room for manoeuvre at the national level in relation to drug use has been retained.¹¹³

However, it is with the cultivation for recreational use as is now proposed in Uruguay and the US states of Washington and Colorado where the limit of latitude of the conventions is reached. According to both the spirit and the letter of the three drug control conventions, while permitted to ‘soften’ the criminal sanction requirements in various ways, governing authorities cannot create a legally regulated market, including the supply, production, manufacture or sale of cannabis, for non-medical and non-scientific, or put another way recreational, purposes. Proscriptions laid out in the conventions clearly prevent authorities from creating a legal market for cannabis or any other currently scheduled drug along the lines of those models developed for alcohol and tobacco.¹¹⁴

Soft defection

The ink of the 1961 Single Convention had not yet dried when the debate about the status of cannabis restarted. At the session of the CND immediately following the 1961 conference, comments from professionals in the Dutch press saying that “*cannabis addiction was no worse than alcoholism*” triggered a debate in which some expressed views not entirely consistent with the international control policy that had just been embodied in the Single Convention. The response of the majority in the CND was that the international community had agreed that cannabis use was a form of drug addiction and emphasized that any publicity to the contrary was misleading and dangerous.¹¹⁵ Over the years, this kind of response would become emblematic whenever anyone dared to voice dissent. Known today as the ‘Vienna consensus’ (since the UN drug control machinery moved from Geneva to Vienna in 1980) that so-called consensus is hailed by its promoters as the bedrock of the UN drug control system. On the other hand those favouring reform see it as a barrier for modifying the status quo of an increasingly inadequate regime that is no longer fit for purpose; if indeed it ever was.

Growing popularity and increasingly widespread use, particularly its close association with emerging counter-cultural movements during the 1960s, saw cannabis become the focus of drug enforcement activities in many Western countries in the second half of the decade. At the same time cannabis consumption in countries with traditional

112. E/CN.7/590 (1998), *Commentary on the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, given in Vienna on 20 December 1988*, New York: United Nations, p. 82.

113. Bewley-Taylor and Jelsma (2012).

114. Bewley-Taylor and Jelsma (2012).

115. Bruun, Pan & Rexed (1975), p. 201

use continued nearly unabated and became the destinies of Western cannabis pilgrims. A shift in drug use patterns within these Western nations coincided with the coming into force of the Single Convention and the birth of the new era in international drug control; including paradoxically increased controls on the drug under the UN operated regime. In many states, the number of arrests for drug use offences reached unprecedented levels. This was driven largely by the growth in cannabis offences, including those for simple possession. In the USA, for example, offences relating to the drug rose by 94.3 per cent between 1966 and 1967, the year the Convention was ratified in Washington, with even small amounts of cannabis potentially resulting in custodial sentences of ten years.¹¹⁶

Although this was an extreme, large numbers of predominantly young people were receiving criminal convictions, fines and, in some cases, prison sentences in a range of Western countries. The handling of cannabis users within a variety of national legal systems consequently triggered significant domestic debate. These involved large public inquiries or commissions to examine drug use and have recommended changes in the law on cannabis, in a number of nations, principally in the UK (Report by the Advisory Committee on Drugs Dependence, the so-called Wootton Report, 1969), the Netherlands (The Baan Commission, 1970 and Hulsman Commission, 1971), the US itself (The Shafer Commission Report, *Marihuana: A Signal of Misunderstanding*, National Commission on Marihuana and Drug Abuse 1972), Canada (The Commission of Inquiry into the Nonmedical use of Drugs, the so-called Le Dain Commission, 1973) and Australia (Senate Social Committee on Social Welfare, 1977).

As with earlier inquiries, including the Indian Hemp Commission of 1894, the Panama Zone Report in 1925 and the 1944 La Guardia Report, all the exercises came to broadly the same conclusions. Cannabis was not a harmless psychoactive substance, yet compared with other drugs the dangers were exaggerated. Further, there was general agreement that “*the effects of the criminalization of cannabis were potentially excessive and the measures even counterproductive.*” Consequently, “*lawmakers should drastically reduce or eliminate criminal penalties for personal use.*”¹¹⁷ Their reports had no noticeable effect on the attitude of the international drug control community, whose energies continued to be directed towards a tenacious defence of the correctness of its own position. Officials in the UN who have strong views against the prevailing policy refrain from expressing them publicly, blocked by the general unwillingness to question the status quo that would likely involve a departure from the basis of the current drug control system.¹¹⁸

Such stasis on the international stage, however, did not prevent a number of waves of what can be called ‘soft defection’ from the conventions’ dominant zero-tolerance approach to the non-medical and non-scientific use of cannabis at a national, and in many cases, subnational level. Despite, and in many ways because, of a continuation of the federal government’s opposition to any alteration of the law after the Shafer

116. Bewley-Taylor (2012), p. 158

117. Room, Robin; Benedict Fischer, Wayne. Hall, Simon Lenton and Peter Reuter, *The Global Cannabis Commission Report. Cannabis Policy: Moving Beyond Stalemate*, Beckley: The Beckley Foundation, 2008), p. 96; Ballotta, Bergeron and Hughes (2009), pp. 106–09.

118. Bruun, Pan & Rexed (1975), pp. 201-02. The propensity of international drug control officials to not to speak out publicly while having their doubts is still prevalent until this day as the authors have experienced while attending the CND since 1997.

Commission Report, a number of US states relaxed their policies regarding possession and decriminalized or depenalized personal use in the 1970s. To be sure, while the US successfully exported its prohibitionist policy to the rest of the world, the federal government had major difficulties in maintaining its policy domestically.¹¹⁹

The dichotomy began when the Nixon administration introduced the Controlled Substances Act in 1970 and initiated the so-called war on drugs. The law designated cannabis as a Schedule I drug regarded as possessing a high potential for abuse and no medicinal value. At the same time Nixon also appointed the Shafer Commission to study cannabis use in the US. This backfired on the President with the Commission favouring an end to cannabis prohibition and the adoption of other approaches, including a social control policy seeking to discourage marijuana use. While presenting the findings to Congress in 1972, the Commission's chairman recommended the decriminalization of small amounts of amounts, saying, "*the criminal law is too harsh a tool to apply to personal possession even in the effort to discourage use.*"

Nixon dismissed the Commission's findings. Nevertheless, the report had a considerable impact on the diverging trends on cannabis in the US. In 1973 Oregon became the first state to decriminalize cannabis. Possession of one ounce (28.45 grams) or less became punishable only by a \$500 to \$1,000 fine. California followed in 1975, making possession under one ounce for nonmedical use punishable by a \$100 fine. The Alaska Supreme Court ruled in 1975 that possession of amounts up to one ounce for personal use was legal in one's own house under the state constitution and its privacy protections. Other states followed with varying policies, including measures such as fines, drug education, drug treatment instead of incarceration, or assigning the lowest priority for law enforcement to various cannabis offences.

At the national level, in an isolated example of politicians taking on board commission advice, Dutch authorities acted on many recommendations made by the Baan and Hulsman Commissions and began a re-evaluation of how to deal with cannabis use: a process that was to lead to the coffee shop system. The Dutch government at the time was even prepared to legalize cannabis, according to Memorandum of the government in January 1974:

The use of cannabis products and the possession of them for personal use should be removed as soon as possible from the domain of criminal justice. However, this cannot be realized as yet, as it would bring us into conflict with our treaty obligations. The Government shall explore in international consultations whether it is feasible that agreements as the Single Convention be amended in a way that nations will be free to institute, at their discretion, a separate regime for cannabis products.¹²⁰

However, fully aware that an amendment of the Single Convention was impossible when at the other side of the Atlantic a war on drugs had been declared, the Dutch government did not insist. Although there have been adjustments over time, current policies in both the Netherlands, and at the subnational level in some individual US

119. Blickman, Tom and Martin Jelsma (2009), *Drug Policy Reform in Practice: Experiences with Alternatives in Europe and the US*, Amsterdam: Transnational Institute and Nueva Sociedad, http://www.druglawreform.info/images/stories/documents/NS_222_TB_MJ_English_Version.pdf

120. De Kort, Marcel (1994), 'The Dutch Cannabis Debate, 1968-1976', *The Journal of Drug Issues* 24(3), pp. 417-427, quoting a Memorandum [Nota] of 4 January 1974 in the *Nederlandse Staatscourant (Netherlands State Gazette)*, No. 5, 8 January 1974.

states, can then be seen as a legacy of policy choices made during a first wave of cannabis liberalization four decades ago. More recently, there have been significant alterations in the way increasing numbers of jurisdictions have dealt with cannabis use. A second wave of policies that soften the prohibition of recreational use of the drug via decriminalization can be identified around the globe, including nations in Latin America and Europe and within Australian states and territories.¹²¹

These waves of soft defection mainly consisted of softening or abolishing penal provisions for personal use, possession for personal use and sometimes the cultivation of a limited amount of plants for personal use. What might be seen as a third wave of soft defection started in the mid-1990s, to a large extent overlapping with the second one, but including the quasi-regulated cultivation of larger plantations of cannabis. The main examples are the medical marijuana movement in the US and the emergence of cannabis social clubs in Spain. In 1996, voters in California passed Proposition 215, the Compassionate Use Act, exempting medical use of cannabis from criminal penalties. This does not legalize cannabis, but changes how patients and their primary caregivers are treated by the court system. California's law allows for individuals to possess, cultivate and transport cannabis as long as it is used for medical purposes with a doctor's prescription.¹²²

Since 1996 other states have followed the Californian example to varying degrees – currently there are 18 US states with medical marijuana laws and 14 states that have decriminalized cannabis one way or another. Medical marijuana dispensaries and cannabis buyers' clubs have emerged to provide cannabis to those with legitimate medical need. A stable grey market has emerged in the US – as in the Netherlands, regarding coffee shops – through trial and error. Cannabis is now available as a medical treatment in several US states to almost anyone who tells a willing physician he would feel less discomfort if he smoked.¹²³ Despite substantial differences across counties and cities, the 'Californian model' has grown into something close to *de facto* legalization for recreational use.

The regulation of medical marijuana cultivation, despite the difference between state and federal legislations, could be considered as a precursor to the regulation of cannabis cultivation for recreational use that was approved by voters in the referendums in Washington state and Colorado in November 2012, following alcohol regulation models. The intransigence of the federal government regarding the states medical marijuana arrangements, in particular its move towards *de facto* regulation of cultivation for recreational use, has made cannabis policy a battleground for activists, law enforcement, voters, ballot initiatives, local, state and federal legislators and in the final instance, the courts. The successful ballot initiatives in Washington and Colorado are the most recent stage in this process.

121. Bewley-Taylor (2012), p. 157-190; and Ari Rosmarin and Niamh Eastwood, *A Quite Revolution: Drug Decriminalisation Policies in Practice Across the Globe*, (London; Release, 2012)

122. Blickman and Jelsma (2009).

123. An owner of a dispensary estimated that 40 percent of clients suffer from serious illnesses such as cancer, AIDS, glaucoma, epilepsy and multiple sclerosis. The rest claim to have less clearly defined ailments like anxiety, sleeplessness, attention deficit disorder, and assorted pains. See: Samuels, David (2008), *Dr. Kush: How Medical Marijuana Is Transforming The Pot Industry*, The New Yorker, July 28, 2008 (http://www.newyorker.com/reporting/2008/07/28/080728fa_fact_samuels)

In Spain grassroots initiatives created cannabis social clubs making use of a grey zone in the national law and court jurisprudence, although it is not exactly clear what leeway these provide. The cannabis movement first went to the Basque Parliament in 1997, with a delegation of the Kalamudia association that had just successfully established its first collective and public cannabis plantation. The first club was legally constituted in 2001, and since then hundreds have appeared all over Spain, in particular in the Basque Country and Catalonia, despite recurrent police intervention. However, several courts have allowed the model ordering the police to return the seized cannabis and plants.¹²⁴

The associations call for greater clarity in the law in order to be able to carry out individual and collective cultivation for medicinal purposes and personal recreational consumption, something that in theory has been decriminalized in Spain. That is as long as there is non-profit distribution exclusively to a closed group of adult members that have a right to their share of the harvest according to their personal needs and are registered at the club. More recently a more commercial type of club has appeared, in particular in Barcelona. This essentially functions as a Dutch style membership-only coffee shop. These clubs are gaining ground thanks to their high budgets and their links with part of the cannabis industry. One of the larger clubs in Barcelona was also behind the initiative that consisted of large scale plantations by regular farmers in the municipality of Rasquera in Catalonia to supply their members.¹²⁵ However, this move was stopped by the authorities.

The so-called ‘Spanish model’ was followed by activists in other European countries – even in France, the country with one of the strictest drug laws in Europe¹²⁶ – and in Latin American countries such as Argentina, Uruguay, Colombia and Chile depending on how it fits in each country’s national law, *de facto* decriminalization conditions and court rulings.

Cannabis exonerated

At the UN level the increased soft defection regarding cannabis in some Western countries led to a reaction at the 2002 session of the CND. The attempt was based on the 2001 annual report of the INCB, which contained strong language about the leniency trend. On the first day of the session the president of the INCB, Hamid Ghodse, stated: “*In the light of the changes that are occurring in relation to cannabis control in some countries, it would seem to be an appropriate time for the Commission to consider this issue in some detail to ensure the consistent application of the provisions of the 1961 Convention across the globe.*” The hard liners in international drug control took up this invitation and expressed their grave concern. Morocco for instance pointed at the emerging contradiction between the trend towards decriminalization of

124. Barriuso Alonso, Martín (2011), *Cannabis social clubs in Spain: A normalizing alternative under-way*, TNI Series on Legislative Reform of Drug Policies Nr. 9, January 2011; <http://www.druglawreform.info/images/stories/documents/dlr9.pdf> For more information on the clubs see: <http://www.druglawreform.info/en/home/tag/43-cannabis-clubs>

125. See: Barriuso Alonso Martín (2012), *Between collective organisation and commercialization: The Cannabis Social Clubs at the cross-roads*, TNI weblog, August 9, 2012

126. See for instance: *Les Cannabis Social Clubs forcent la loi*, Libération, 16 February 2013; http://www.liberation.fr/societe/2013/02/15/les-cannabis-social-clubs-forcent-la-loi_882204

cannabis use and a continuing pressure on ‘Southern’ countries to eradicate cannabis with repressive means.¹²⁷

Although Morocco – a major supplier of hashish for the European market – certainly had a point, it should not be forgotten that in many so-called ‘Southern’ producer countries, often with a long tradition of cannabis use, law enforcement services habitually turn a blind eye to domestic cannabis use as well. In the end, such selective focus towards cannabis use in developing countries and *de facto* decriminalization policies in Western countries are quite similar. One could, therefore, point to the hypocrisy on both sides of the debate and the lack of realization that there is in fact more common ground than it seems in arguing for a regime change, in particular where cannabis is concerned.

These ‘skirmishing about “lenient policies”’ continued at the CND in 2003, but remained unresolved. One of the outcomes of the debate was a request to the United Nations Office on Drugs and Crime (UNODC) to prepare a global market survey on cannabis.¹²⁸ That request was answered with a special chapter in the 2006 World Drug Report, entitled *Cannabis: Why we should care*. In the report the UNODC recognized that “*much of the early material on cannabis is now considered inaccurate, and that a series of studies in a range of countries have exonerated cannabis of many of the charges levelled against it.*”¹²⁹ It goes on to note that “*medical use of the active ingredients, if not the plant itself, is championed by respected professionals.*” That in itself is surely a valid reason to remove cannabis from Schedule IV. In so many words, the UNODC acknowledged that the scientific base for putting cannabis on the list of the 1961 Single Convention at the same level as heroin has been incorrect.

Nevertheless, the report is ambiguous in its tension between scientific research and the political correctness of the global drug prohibition regime. In its preface, written by Antonio Maria Costa, the UNODC Executive Director at the time, the unsubstantiated allegations about cannabis re-emerged. Costa claimed that the unlimited supply and demand of cannabis were “*devastating*” and that the world was experiencing a “*cannabis pandemic.*” According to Costa “*the characteristics of cannabis are no longer that different from those of other plant-based drugs such as cocaine and heroin.*” In so doing the Executive Director echoed the unsubstantiated claims of Anslinger and Wolff more than fifty years before. Central to this claim was the emergence of high potency cannabis on the market, and the failure to control supply at global level.

Costa’s strong language was at odds with the more cautious section about cannabis in the World Drug Report, however. To be sure, the claim of a devastating cannabis pandemic is not anywhere substantiated. Further, the report suffers from an attempt to bridge the gap between the exaggerated claims within Costa’s preface and the more

127. Although some observers pointed the finger at the United States as the one behind the attack, see Bewley-Taylor (2012), pp. 202-05. See also: Blickman, Tom (2002), *European Cannabis Policies Under Attack*, TNI Briefing, April 2002; <http://www.undrugcontrol.info/en/issues/cannabis/item/2400-european-cannabis-policies-under-attack>

128. UN General Assembly resolution 59/160, 20 December 2004; http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/59/160&Lang=E

129. *World Drug Report (WDR) 2006*, United Nations office on Drugs and Crime, p. 156; <http://www.unodc.org/unodc/en/data-and-analysis/WDR-2006.html> See also the *Review of the world cannabis situation*, Bulletin on Narcotics Volume LVIII, Nos. 1 and 2, 2006,

cautious content of the main text itself. Although it contains much valuable information, in trying to span the two the report tends to stress the negative and discard the positive. It basically ignores the increased medical use of cannabis. In discussing potential health and addiction problems the UNODC admit that much of the scientific data is still inconclusive, but the report tends to highlight research that indicates problems, while research that contradicts these conclusions is disregarded. The report does, nonetheless, demonstrate that supply reduction is impossible given the potential to grow the plant anywhere and that all past attempts to control availability had failed.

In its final conclusion, however, the report raises the key issue concerning cannabis today as evidenced by the pioneering reform initiatives in Uruguay, and Washington and Colorado in the US: *“The world has failed to come to terms with cannabis as a drug. In some countries, cannabis use and trafficking are taken very seriously, while in others, they are virtually ignored. This incongruity undermines the credibility of the international system, and the time for resolving global ambivalence on the issue is long overdue. Either the gap between the letter and spirit of the Single Convention, so manifest with cannabis, needs to be bridged, or parties to the Convention need to discuss redefining the status of cannabis.”*¹³⁰

Now, seven years after this conclusion, and given the fact that some jurisdictions are on the verge of allowing a regulated market for recreational use, the debate about a different status of cannabis in the international drug control regime seems to be more necessary than ever.

130. WDR 2006, p. 186