



POLICY BRIEF: _____

Recreational Cannabis Regulation & International Law

MAY 17, 2017

Scenarios for States Parties to the UN Drug Conventions

International Centre for Science in Drug Policy
Munk School of Global Affairs, University of Toronto



TABLE OF CONTENTS

Executive Summary	3
Introduction	5
The International Drug Control Regime	6
Case Study: Cannabis Policy in Canada	8
Methodology	9
Scenarios	10
Scenario 1: Amending the 1961 Single Convention	10
Scenario 2: Withdrawing and Re-acceding with Reservations	11
Scenario 3: The Compatibility Argument	12
Scenario 4: Principled Non-compliance	13
Conclusion	15
Acknowledgements	16
References	16



EXECUTIVE SUMMARY

There is growing interest by national governments in exploring the adoption of legislation to legalize and regulate recreational cannabis markets. As such, a range of stakeholders is increasingly seeking clarification on whether such a policy change is in compliance with international law. This policy brief responds to this need by outlining four potential policy pathways for national governments to align their international legal obligations with domestic legalization of recreational cannabis, using Canada as a primary case study. By employing a transformative scenario planning (TSP) process, this policy brief aims to inform key stakeholders of the opportunities and challenges associated with a range of policy scenarios.

TSP involves an investigation of current political and international trends to construct relevant and plausible scenarios. Importantly, the TSP process does not predict the most likely or unlikely scenarios, nor does it seek to determine whether certain scenarios are preferable. Instead, this process articulates the potential policy space available to policymakers, and it is hoped that in this way, allows for a consideration of the full range of policy options.

In order to construct scenarios, a team from the International Centre for Science in Drug Policy and the Munk School of Global Affairs at the University of Toronto conducted an in-depth literature review on a variety of topics including: Canada's historical and evolving position on illicit drug policy issues; Canada's current international drug policy commitments; the approach United Nations (UN) Member States have taken to modify their international commitments or respond to critiques that they are not upholding their commitments; and the current debates regarding the regulation of recreational cannabis markets in a range of settings. Following this initial review, key informants in government along with international and Canadian

experts in illicit drug policy were consulted to assess, analyze, and further refine the scenarios.

With Canada's experience as a guide, this process ultimately yielded four potential scenarios available to States Parties to the UN drug conventions to align their international legal obligations with the regulation of domestic recreational cannabis markets:

Scenario 1: *Request an amendment* of the 1961 United Nations Single Convention on Narcotic Drugs to allow for the national regulation of recreational cannabis markets. Although the 1961 Single Convention allows for amendments, the procedure to do so is lengthy and highly politicized. Support from a majority of States Parties would be necessary for this scenario to be successful.

Scenario 2: *Withdraw* from the 1961 Single Convention and ***re-accede with reservations*** related to articles on the regulation and legalization of recreational cannabis. This scenario is modeled on Bolivia's withdrawal and re-accession to the 1961 Single Convention with a reservation regarding coca leaf cultivation, possession, and use. As with Scenario 1, this would require support from States Parties to be successfully implemented.

Scenario 3: *Articulate a legal argument on the compatibility of recreational cannabis regulation* within the UN drug conventions. This scenario is modeled on Uruguay's response to questions around the country's international legal obligations in the face of its decision to regulate recreational cannabis nationally, specifically that regulating cannabis does not undermine its support for and adherence to the 1961 Single Convention's purpose and objectives.



Scenario 4: Enact a stance of principled non-compliance by acknowledging that regulating recreational cannabis markets violates international legal obligations. This scenario could impact a state's international reputation of upholding treaties to which it is a signatory, although this could be mitigated by taking steps to modernize the UN drug conventions.

Each of these scenarios carries implications for States Parties that must be considered alongside potential benefits and drawbacks of cannabis policy reform. Nevertheless, if States Parties do seek to move ahead with implementing regulatory frameworks for recreational cannabis markets, multiple options exist to seek alignment between domestic policies and international treaty obligations.



INTRODUCTION

As part of their election platform, the Liberal Party of Canada pledged to legalize and regulate recreational cannabis markets.¹ This decision, along with the establishment of regulated markets for recreational cannabis in a range of settings,² has increased scrutiny on the compatibility of national efforts to regulate cannabis and international treaties that appear to proscribe this set of policies.^{3,4}

Using Canada as a case study, this policy brief outlines policy options available to states that are parties to the United Nations (UN) drug conventions⁵⁻⁷ (herein referred to as States Parties) seeking to regulate recreational cannabis markets. To do so, a transformative scenario planning (TSP) process was applied to explore options for achieving compatibility between national cannabis regulation policymaking and the international drug control regime. By outlining four possible scenarios, this report aims to inform key stakeholders of the associated opportunities and challenges within this policy space.

The next section provides a brief overview of the international drug control regime and examines the three UN drug conventions to which the vast majority of UN Member States are a party. The section also describes some of the evolutions in the international drug control regime over time and the distinct approach and position taken by various actors and countries on key issues.

To provide a relevant case study, the policy brief then describes the Canadian cannabis regulatory regime by presenting the historical context of an enforcement based response; Canada's evolving position on cannabis policy; and the steps taken by the current Canadian federal government towards cannabis regulation.

A description of the TSP method is then provided. Two linked methodological approaches were employed: first, a TSP exercise was used to identify a wide range of potential scenarios, which were narrowed iteratively through discussion. Second, key informant interviews were undertaken with various experts in the field in which initial scenarios were presented and respondents provided feedback used to assess, analyze, and further refine the scenarios.

The policy brief then delineates the final four scenarios developed through this process. It is hoped that the presentation of these scenarios can aid decision makers to best address the challenges posed by domestic national cannabis policymaking within the current international legal environment.

Finally, a concluding section presents key takeaways, describes potential next steps, and identifies outstanding policy questions raised by the TSP process.

“ Using Canada as a case study, this policy brief outlines policy options available to states that are parties to the United Nations (UN) drug conventions. ”



THE INTERNATIONAL DRUG CONTROL REGIME

Three international conventions form the cornerstone of the international drug control regime: the 1961 Single Convention on Narcotic Drugs (As amended by the 1972 Protocol), the 1971 Convention on Psychotropic Substances, and the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.⁵⁻⁷ The vast majority of UN Member States (including Canada) are a party to these conventions, all of which enjoy widespread adherence.⁸ States Parties are required to adopt national legislation that establishes necessary controls and many experts argue that policies of legalization and regulation of the recreational use of drugs identified in these conventions place States Parties out of compliance with their international legal obligations.⁹ As such, if States Parties move ahead with domestic legalization and regulation of recreational cannabis markets, normative pressure among other States Parties will likely require a legal justification given concerns that such a cannabis policy reform is in violation of international law. A range of options to reform the UN system for cannabis control have been articulated.¹⁰ Absent such broad treaty reform, however, States Parties seeking to reform national cannabis laws and ensure alignment with the treaties face ongoing challenges.

Specifically, the 1961 Single Convention has been widely interpreted as strictly prohibiting the national legalization of recreational cannabis use,¹¹ as it states that “the production, manufacture, export, import, distribution of, trade in, use and possession” of cannabis should be limited “exclusively to medical and scientific purposes.”¹² International bodies have sought to uphold this and other treaty articles stipulating the need to maintain criminal sanctions. For instance, the International Narcotics Control Board (INCB), a quasi-judicial agency monitoring States Parties adherence to the UN drug conventions (created in the wake of the 1961 Single Convention), has stated that cannabis legalization represents

a threat to public health.¹² As such, the INCB has consistently objected to countries moving towards the regulation of recreational cannabis markets.¹² It is noteworthy, however, that the INCB’s enforcement tools are limited to either “naming and shaming” or restricting the capacity of countries to engage in the legal international market for narcotics.¹³ For instance, in principle, the 1961 Single Convention assigns the INCB the capacity to reduce a state’s opium export quotas or recommend an embargo on imports and exports of psychotropic substances against States Parties deemed in violation of the treaty; in practice, such extreme measures are seldom applied.^{9,14} While States Parties can also be referred to the International Court of Justice over issues arising within the purview of the UN drug conventions,¹⁵ this mechanism was designed to address trade disputes between countries rather than treaty non-adherence. However, neither of these mechanisms has yet to be invoked so at present remain theoretical responses to conflict resolution within the UN system.¹⁶

“ If States Parties move ahead with domestic legalization and regulation of recreational cannabis markets, normative pressure among other States Parties will likely require a legal justification. ”

The past decades have brought unprecedented changes to the international drug control regime. The current system of cannabis criminalization in particular, has been the subject of intense pressure as countries have sought to innovate around national approaches to cannabis control.^{9,17} For example, Mexico’s Supreme Court declared that individuals should have the right to grow, possess, and consume cannabis for their personal use but restricted this ruling to apply only to specific claimants on



an individualized basis;¹⁰ Uruguay established a regulated distribution and consumption model for recreational cannabis use,¹⁸ and Argentina's Supreme Court ruled that the criminal punishment of personal cannabis possession and use was unconstitutional.¹⁰

Unlike Canada and Uruguay, which implemented a national law, the United States (U.S.) has experienced piecemeal legalization of cannabis markets at the state level. As of May 2017, eight states and Washington, DC have proceeded with the establishment of regulatory frameworks for recreational cannabis markets.¹⁹ Interestingly, the federal government has argued that the country is not contravening its commitment to the UN drug conventions as federal laws in the U.S. remain unchanged, however, the validity of this legal argument has been questioned.²⁰

At the annual UN meeting on drug control, the Commission on Narcotic Drugs (CND), States Parties have agreed on statements supportive of the 'status quo' on cannabis policy. However, as above, there is an increasing fracturing of the consensus on such issues, with States Parties experimenting with various forms of recreational cannabis policy reform.^{10,12} The United Nations General Assembly Special Session (UNGASS) on the World Drug Problem in April 2016, the largest international meeting on drugs since 1998, took place against this backdrop of increasingly divergent national drug policies, and a specific interest in domestic cannabis policy reform.²¹ Due to an international forum that operates by consensus, however, these disagreements were not reflected in the UNGASS Outcome Document.²² Within this international climate, the position that individual States Parties take to seek alignment between national cannabis policy reform and their international legal obligations has the potential to reverberate internationally and set a precedent for other states.

“ The position that individual States Parties take to seek alignment between national cannabis policy reform and their international legal obligations has the potential to reverberate internationally and set a precedent for other states. ”



CASE STUDY: CANNABIS POLICY IN CANADA

For five decades, the Canadian legal system has prioritized the use of criminal sanctions for cannabis.²³ Legally, this was first codified in Canada's federal Narcotic Control Act of 1961.²⁴ In this act, cannabis was classified as a Schedule 1 narcotic, which entailed a "maximum sentence of seven years' imprisonment [...] for simple possession and life imprisonment for most supply offences."²³ This new law, combined with the rise in popularity of cannabis use in Canada, made it a key driver of drug arrests by the late 1960s.²⁵

In 1972, the Le Dain Commission, a Senate investigation implemented by the federal Liberal government of the day to study non-medical use of drugs, concluded that, "criminal prohibition was an excessive, ineffective, and costly tool for controlling cannabis use."²⁶ Nonetheless, it was not until the 1990s that the Canadian government initiated cannabis law reform to reflect increasing support for a relaxation of criminal sanctions for cannabis use and possession among Canadians, which enjoyed broad public support.²³ This cannabis law reform did not, however, remove the criminal sanctions associated with schedule of cannabis use and possession. Instead, the law placed "cannabis offence[s] limited to 30 grams of marijuana or 1 gram of hashish" under a separate schedule of offences that "would be dealt with by summary proceedings only, and maximum sentences were limited to \$1,000 and/or six months' imprisonment (first offence)."²⁵

The Liberal Party of Canada's victory in the 2015 federal election set the stage for the implementation of a national framework to regulate recreational cannabis markets, with a stated goal of reducing cannabis access among youth.¹ In late 2016, a government appointed task force submitted a report with their recommendations for cannabis policy reform, based on several months of consultations with a wide range of stakeholders across Canada.²⁷

On April 13, 2017, the federal Liberal government introduced a bill in the House of Commons that adhered largely to the recommendations of the task force, while leaving many of the specifics related to the distribution of cannabis to provincial governments.¹ For the purposes of the TSP exercise and resulting scenarios, this policy brief assumes that this process will continue to move forward in Canada, culminating with the legalization and regulation of recreational cannabis markets.

“ On April 13, 2017, the federal Liberal government introduced a bill in the House of Commons that adhered largely to the recommendations of the task force, while leaving many of the specifics related to the distribution of cannabis to provincial governments. ”



METHODOLOGY

The methodological framework used in preparing this policy brief is based on the *Scenarios for the Drug Problem in the Americas* process,²⁸ conducted by the Organization of American States (OAS). This process sought to identify drug policy options for states across the Americas and engaged a large number of stakeholders across many months to achieve this goal.²⁸ Reflecting on the OAS TSP process, project leader Adam Kahane provided the following definition of TSP methodology:

The scenario team's task was to construct relevant, challenging, plausible, and clear scenarios of what could happen in the future regarding drug policy, based on current trends and including relevant political, economic, social, cultural and international dynamics. These scenarios would not be forecasts of what will happen or recommendations of what should happen over the coming years. The goal was to create radically different ways of understanding – and responding to – “the drug problem.”²⁸

While the process that the authors of this policy brief undertook was much more limited in scope, the OAS framework was employed as a guiding template. First, the authors conducted a literature review on a number of related topics, including: Canada's historical and evolving position on illicit drug policy issues; Canada's current international drug policy commitments; the approach UN Member States have taken to modify their international commitments or respond to critiques that they are not upholding their commitments; and the current debates regarding the regulation of recreational cannabis markets in a range of settings. Based on this scoping review, the authors developed a large number of wide-ranging scenarios considering different possibilities for the relationship between international obligations on cannabis control and domestic priorities among States Parties.

Second, and with guidance from policy analysts at the International Centre for Science in Drug Policy, the authors undertook an iterative process wherein less-relevant scenarios were discarded and those that had substantive overlap were merged. This yielded five scenarios identified as best reflecting possible pathways to align national cannabis regulation and international legal obligations.

Third, key informant interviews were held with experts in cannabis policy and international drug control from diverse sectors, including senior national policymakers, members of civil society, policy analysts, academic scholars, and legal experts. When conducting interviews, key informants were given the choice of three ways to contribute: remain anonymous; be attributed by their affiliation; or be attributed by their name. Key informants were asked to respond to the five scenarios, as well as provide guidance on additional relevant information, including further readings or other experts that may have valuable input on the scenarios. Based on their feedback, one scenario was discarded and existing scenarios were further refined. This process ultimately yielded four scenarios, which are outlined in detail in the next section.

“ While the process that the authors of this policy brief undertook was much more limited in scope, the OAS framework was employed as a guiding template. ”



SCENARIOS

Scenario 1: Amending the 1961 Single Convention

Under this scenario, States Parties would introduce an amendment to the 1961 Single Convention on Narcotic Drugs that would eliminate the Convention's provisions prohibiting any form of cannabis regulation related to both consumption and production. For instance, States Parties could propose an amendment that would allow for more flexibility for signatories that want to legalize and regulate cannabis within their jurisdictions. Although the specifics can differ, this scenario would strive to place the implementation of a domestic regulatory system for recreational cannabis markets in compliance with the 1961 Single Convention. This scenario also offers a long-term reconciliation between national and international law that could improve treaty adherence within the current global drug control regime.

A specific procedure for introducing an amendment to the 1961 Single Convention exists, which is outlined in Article 47, titled 'Amendments.'⁶ First, a state party to the Convention proposes an amendment by stating the reasons behind the proposed amendment to the UN Secretary-General. The Secretary-General is tasked with communicating this information to the other parties and to the Economic and Social Council. The Council has two options. The first option, based on Article 62, paragraph 4, of the UN Charter, states that the Council can call for a conference, during which the proposed amendment is considered. Under the second option, the Council may decide to ask States Parties whether they accept the proposed amendment. All parties can then provide the Council with comments or counter-proposals. After details of a newly proposed amendment are circulated among relevant parties, the parties have 18 months to reject the proposal. If no party rejects the new amendment, it is entered into force. However, if a party rejects a new amendment, the

Council has the option of calling a conference to discuss the issue, wherein they may approve the amendment (although it would not apply to objecting states), or reject the amendment.²⁶ The Council can also submit the amendment to the UN General Assembly (GA) for consideration, which would also allow the GA to convene a conference, or to discuss and adopt amendment by simple majority vote.

The case of Bolivia's amendment for coca leaf provides valuable insight into the possible consequences of such an approach. In 2009, Bolivia proposed an amendment to the 1961 Single Convention, which is the only recent attempt at using the Convention's amendment procedure.⁹ Through this amendment, the Bolivian government sought to remove only one of the 1961 Single Convention's long-term goals: the complete abolition of coca leaf chewing within twenty-five years. The government of Bolivia argued that it had legitimate grounds to propose this amendment given the cultural importance of coca leaf chewing for its indigenous population.²⁹ Nevertheless, eighteen countries initially blocked Bolivia's proposal by arguing that the amendment undermined the integrity of the treaty, leading to its failure.²⁹ The Bolivian case demonstrates the political risk and lengthy process of introducing an amendment. This process may be even more complex for other states, like Canada, that do not have robust cultural or historical reasons to justify a treaty amendment to permit cannabis regulation. Executing this scenario will require negotiations, coalition building, and the support of powerful states.

Given the highly politicized nature of this topic, it may prove difficult for States Parties to form a like-minded group to support an amendment related to recreational cannabis regulation. Although there is increasing support within a number of States Parties for a new approach to cannabis policy, many



governments remain unwilling to address the issue. For instance, despite several U.S. states having already legalized recreational cannabis markets, the U.S. government is unwilling to adjust current international drug treaties.³ Similarly, although the Mexican Supreme Court declared that individuals should have the right to grow, possess, and consume cannabis for their personal use, Mexican President Enrique Peña Nieto remains opposed to any form of legalization.³⁰ For States Parties considering the implementation of this scenario, an assessment of the international political climate in relation to cannabis legalization will be required, and will likely be determinative in the viability of this approach.

“ Executing this scenario will require negotiations, coalition building, and the support of powerful states. ”

Scenario 2: Withdrawing and Re-acceding with Reservations

Under this scenario, States Parties would withdraw from the 1961 Single Convention and re-accede with a set of reservations that would allow for the regulation and legalization of cannabis for recreational use. This process would involve the passage of domestic legislation followed by a series of formal diplomatic activities within the UN system. First, States Parties would pass legislation denouncing the Convention, which would then be followed by the establishment of a national system of legalization and regulation. Then, States Parties would work towards re-acceding to the 1961 Single Convention (i.e., recommitting itself to adhering to its articles) with specific reservations consistent with the domestic regulatory system that has been

implemented. Importantly, States Parties may only re-accede if less than one third of the 184 parties to the 1961 Single Convention object to its re-accession.

The Bolivian case once again demonstrates how this scenario could be achieved. As outlined in Scenario 1, in 2009, Bolivia’s proposal to amend the 1961 Single Convention by removing the ban on coca leaf chewing was blocked by eighteen States Parties.²⁹ As a result, Bolivia then took the unconventional approach of denunciation followed by re-accession with a reservation. In 2011, Bolivia withdrew its membership from the 1961 Single Convention. The Bolivian government then legalized the production and consumption of coca leaf at the national level on cultural grounds. In January 2013, Bolivia sought to re-accede to the 1961 Single Convention. For its re-entry to be rejected, 62 parties would have had to vote against Bolivia’s re-accession; only 15 parties rejected the re-entry and Bolivia re-acceded to the 1961 Single Convention with reservations regarding coca leaf.³¹

Bolivia’s government used arguments of cultural patrimony, social cohesion, and national identity to justify the legalization of the production and use of coca leaf. Importantly, the UN Permanent Forum on Indigenous Issues endorsed Bolivia’s argument.²⁹ For other States Parties to successfully employ the mechanism of withdrawal and re-accession with reservations, governments will likely be required to establish a formal argument on why the use of cannabis and the related regulation system has significant meaning to the country and its society.

This argument could be uniquely rooted in the States Parties’ society and/or culture, although it could also be made on the basis of the potential harms to health and wellbeing posed by current approaches to cannabis control.



It is important to note that this scenario could alter a States Parties' reputation as a multilateralist member of the international community.⁴ In the case of Canada, it has always been a country that seeks to honour international treaty obligations;³² the indirect challenge to the international drug control regime inherent to this scenario therefore runs counter to Canada's historical approach to the UN system (with some observers arguing this is a critical barrier to the Canadian implementation of recreational cannabis regulation³³) and is likely to run counter to precedence in other States Parties as well. Additionally, pressure from powerful states such as the U.S. or Russian Federation may impede a States Parties' capacity to undertake withdrawal and re-accession. Indeed, both the U.S. and Russian Federation have previously objected to almost any kind of cannabis reform, while both blocked Bolivia's amendment attempt and voted against Bolivia's re-accession (as did Canada).²⁹ It is also noteworthy that the Bolivian approach has been openly criticized by the INCB.³⁴ Hence, international criticism and reputational costs must be taken into account by States Parties considering withdrawal and re-accession, as will potential impacts on economic, geo-political, and cultural relationships with other states.

The potential impacts of this scenario on the broader international treaty system must also be considered. A States Parties' decision to withdraw from the system and re-accede with reservations when a conflict arises makes explicit the tension between the issue of domestic cannabis law reform and treaty flexibility.

Such a scenario may open the door for states to address other aspects of treaty non-compliance via the process of withdrawal and re-accession with reservations. Consequently, this scenario does not take substantive steps towards

modernizing and reconciling tensions within the international drug control regime and could result in a weakening of this system.

“ A States Parties' decision to withdraw from the system and re-accede with reservations when a conflict arises makes explicit the tension between the issue of domestic cannabis law reform and treaty flexibility. ”

Scenario 3: The Compatibility Argument

States Parties could choose to assert that the regulation of recreational cannabis markets is permissible under the treaties as they currently exist. Under this scenario, State Parties would articulate a legal argument on the compatibility of recreational cannabis regulation with their international legal obligations.

Like Uruguay, State Parties could argue that the regulation of recreational cannabis markets does not impact its commitment to the 1961 Single Convention's purpose and objectives. In 2013, Uruguay became the first country in the world to legalize and create a federally regulated market for recreational cannabis.³⁵ In response to accusations of treaty non-compliance, the government of Uruguay argued that regulating recreational cannabis markets is in alignment with the overarching purpose and objectives of the UN drug conventions, namely, the protection of the health and welfare of humankind. The government of Uruguay asserted that the creation of a regulated market for adult use of cannabis is driven by health and security imperatives and is an issue of human rights, and has therefore pointed to wider UN human



rights obligations that need to be respected. The use of this argument by Uruguay suggests that states can frame national legislation as upholding the purpose and objectives of the 1961 Single Convention, despite contravening against specific clauses, in their arguments of compatibility.³⁶

A secondary justification is possible based on the wording of Article 28, paragraph 3 of the 1961 Single Convention, which states, “[t]he Parties shall adopt such measures as may be necessary to prevent the misuse of, and illicit traffic in, the leaves of the cannabis plant.”³⁶ As such, the 1961 Single Convention has been interpreted as implying that if a country decides that an approach other than prohibition is more appropriate for promoting and protecting public health and wellbeing, and for deterring illicit drug trafficking, “that country is not obliged by virtue of the Single Convention to maintain a prohibition policy.”³⁷

One of the trade-offs in pursuing an argument of compatibility is that it again avoids any modernization of the international drug control regime by denying non-compliance. As such, this scenario may serve to prolong the tensions around cannabis within the treaty framework.⁹ However, this scenario avoids the large undertakings of treaty amendment and withdrawal and re-accession with reservations, as described in the scenarios above. Reputational costs of denying non-compliance must also be considered, as would potential impacts on economic, geo-political, and cultural relationships.

Scenario 4: Principled Non-compliance

Under this scenario, States Parties would acknowledge that the regulation of recreational cannabis markets is in breach of the 1961 Single Convention, rather than attempting to argue that

they are in compliance. This could also entail States Parties taking a leadership role within the UN system by articulating the reasons for national policy reform and why a shift in approach is necessary despite international legal commitments. Proceeding with principled non-compliance would set the stage for a range of treaty reform options that could potentially align domestic cannabis policies of regulation with treaty obligations.

Unless the position of principled non-compliance is accompanied with a commitment to treaty modernization, this scenario may only offer a short-term fix rather than a long-term solution to addressing tensions between the 1961 Single Convention and state efforts to legalize and regulate recreational cannabis markets. Interestingly, during the 59th Session of the CND in March 2016, Canada’s Assistant Deputy Minister of Health, Ms. Hilary Geller, expressed Canada’s commitment towards international cooperation, and noted that “[t]he Government remains committed to strong international cooperation to combat the world drug problem and wherever possible, will seek to align its objectives for a new marijuana regime with the objectives of the international drug control framework and the spirit of the Conventions.”³⁸ This suggests an initial acknowledgement of the possibility of non-compliance by the government of Canada and provides a starting point for further discussions of how to align the domestic regulation of recreational cannabis markets with the international drug control regime.

By taking a position of principled non-compliance, States Parties may be better positioned to maintain reputations as multilateralist members of the international community than by sidestepping or denying the inherent conflict between cannabis regulation and treaty obligations. This scenario would allow States Parties to engage in a process



that reaffirms full regard for international law but also explicitly identifies areas that require modernization in the international drug control system. It is worth noting that treaty non-compliance while domestic policies change is fairly common in the evolution and modernization of international treaty systems. Rather than making potentially dubious legal justifications, openly acknowledging non-compliance and working towards realignment could demonstrate a respect for the rule of law.³⁹

No other country has taken a position of principled non-compliance within the international drug control system, and as such there are a range of unknowns. Indeed, the success of the scenario will likely be highly dependent on the political support that States Parties can acquire. Like other scenarios identified in this process, principled non-compliance requires the support of other states to limit potential negative impacts. By taking such an approach, States Parties could galvanize efforts for a new process seeking to resolve the tensions between changing domestic cannabis policies and international obligations. In the case of Canada, a Senate of Canada report previously noted that having a country with a strong international reputation like Canada take a position of principled non-compliance would be beneficial for other countries seeking to engage in domestic cannabis policy reform.⁴⁰ Although experiences thus far demonstrate that States Parties proceeding with cannabis policy reform have not faced significant condemnation from the international community, political support from other states will nevertheless be important in ensuring that resistant states consider treaty modifications or amendments in order to prevent further fragmentation, or even collapse, of the international drug control system.

“ By taking a position of principled non-compliance, States Parties may be better positioned to maintain reputations as multilateralist members of the international community. ”



CONCLUSION

States Parties cannot alone transform normative modes of international cannabis control or the legal obligations of the international drug control regime. As above, States Parties require the support of other parties to amend the 1961 Single Convention to allow for the regulation and legalization of cannabis, as well as to withdraw from the 1961 Single Convention and re-accede with reservations regarding cannabis legalization and regulation. While this has been previously successfully undertaken by Bolivia with respect to coca leaf, the same justification around cultural patrimony may not apply to other States Parties. Given the many unknowns associated with these policy pathways, gauging the positions of other States Parties is likely to be an important first step regardless of the scenario pursued.

It is also worth noting that despite the high profile of cannabis regulation at the UNGASS in April 2016, this issue represents only one aspect of the tensions inherent in the international drug control system. Other sources of tension include the use of criminal sanctions to deter drug use, the use of compulsory addiction treatment, heroin-assisted treatment, access to analgesics, and the role of harm reduction.⁴¹⁻⁴⁵

As the 2019 deadline of the Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem approaches,⁴⁶ tensions within the international drug control system can be expected to continue. Within this broader trend, decisions that States Parties make with respect to reconciling national cannabis policy reform with their international treaty obligations will leave an indelible mark on the international drug control regime.

“ Other sources of tension include the use of criminal sanctions to deter drug use, the use of compulsory addiction treatment, heroin-assisted treatment, access to analgesics, and the role of harm reduction. ”



ACKNOWLEDGEMENTS

The authors acknowledge the participation of and guidance from the following key informants, who were instrumental in the development of this policy brief:

- Dave Bewley-Taylor, Director, Global Drug Policy Observatory, Swansea University;
- John Collins, Director, International Drug Policy Project, London School of Economics;
- Richard Elliott, Director, Canadian HIV/AIDS Legal Network;
- Martin Jelsma, Director, Drugs and Democracy Programme, Transnational Institute;
- Donald MacPherson, Director, Canadian Drug Policy Coalition;
- Senior policymakers at Health Canada; and,
- Others that contributed valuable insight but wished to remain anonymous.

The TSP process and manuscript drafting was undertaken by Zainab Yunusa, Virginia Arsenault, Yun Lin, Joy Rogers, and Kei Zamaninoor from the Munk School of Global Affairs, with oversight from Nazlee Maghsoudi and Dan Werb from the International Centre for Science in Drug Policy.

The authors thank Leo Beletsky and Richard Elliott, who acted as external peer reviewers for this policy brief.

REFERENCES

1. Health Canada. Canada takes action to legalize and strictly regulate cannabis. Ottawa: Government of Canada; 2017.
2. Werb D, Maghsoudi N, Watson TM. State of the evidence: Cannabis use and regulation. Toronto: International Centre for Science in Drug Policy, 2015.
3. Bennett W, Walsh J. Marijuana legalization is an opportunity to modernize international drug treaties, Washington, DC: Brookings Institution, 2014.
4. Hoffman SJ, Habibi R. International legal barriers to Canada's marijuana plans. CMAJ 2016; 188(10): E215-6.
5. ECOSOC. United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. Vienna: United Nations Economic and Social Council; 1988.
6. ECOSOC. Single Convention on Narcotic Drugs, 1961. As amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961. Vienna: United Nations Economic and Social Council; 1972.
7. ECOSOC. Convention on Psychotropic Substances, 1971. Vienna: United Nations Economic and Social Council; 1971.
8. Bewley-Taylor D. Challenging the UN drug control conventions: Problems and possibilities. Int J Drug Pol 2003; 14(2): 171-9.
9. Bewley-Taylor D, Blickman T, Jelsma M. The rise and decline of cannabis prohibition. Amsterdam/Swansea: Global Drug Policy Observatory/Transnational Institute, 2014.
10. Corda A, Fusero M. Cannabis in Latin America and the Caribbean: From punishment to regulation. Amsterdam: Transnational Institute, 2017.



11. Dupras D. Canada's international obligations under the leading international conventions on the control of narcotic drugs. Ottawa: Parliament of Canada; 1988.
12. INCB. Report of the International Narcotics Control Board for 2015. Vienna: International Narcotics Control Board, 2016.
13. Csete J, Wolfe D. Closed to Reason: The International Narcotics Control Board and HIV/AIDS. Toronto/New York: Open Society Institute, 2007.
14. Haase HJ, Eyle NE, Schrimpf JR. The international drug control treaties: How important are they to US drug reform. New York, NY: New York City Bar Association, Committee on Drugs and the Law, Special Subcommittee on International Drug Law and Policy; 2012.
15. Ago R. "Binding" advisory opinions of the International Court of Justice. *Am J Int Law* 1991; 85(3): 439-51.
16. Babor T. Drug policy and the public good: Oxford University Press; 2010.
17. Collins J. Rethinking 'flexibilities' in the international drug control system—Potential, precedents and models for reforms. *Int J Drug Pol* 2017.
18. Queirolo R, Boidi MF, Cruz JM. Cannabis clubs in Uruguay: The challenges of regulation. *Int J Drug Pol* 2016; 34: 41-8.
19. Robinson M. Here's where you can legally smoke marijuana in 2017. *Business Insider*. 2017.
20. Dahl F. U.S. states' pot legalization not in line with international law: U.N. agency. *Reuters*. 2014 November 12.
21. Chatwin C. UNGASS 2016: Insights from Europe on the development of global cannabis policy and the need for reform of the global drug policy regime. *Int J Drug Pol* 2015.
22. Bewley-Taylor D, Jelsma M. UNGASS 2016: A Broken or Broad Consensus? UN summit cannot hide a growing divergence in the global drug policy landscape. Amsterdam: Transnational Institute, 2016.
23. Fischer B, Ala-Leppilampi K, Single E, Robins A. Cannabis law reform in Canada: Is the saga of "promise, hesitation and retreat" coming to an end?! *Can J Criminol Crimin Justice* 2003; 45(3): 265.
24. Solomon R, Green M. The first century: The history of nonmedical opiate use and control policies in Canada, 1870-1970. *UW Ontario L Rev* 1982; 20: 307.
25. Jones S, Porter R, Bishop C. The implementation of medical ganja in Jamaica. *Int J Drug Pol* 2017.
26. Commission LD. Report of the Commission of Inquiry into the Non-Medical Use of Drugs. Ottawa: Senate of Canada, 1972.
27. McLellan A, Ware M, Boyd S, et al. A Framework for the Legalization and Regulation of Cannabis in Canada. Ottawa: Government of Canada, 2016.
28. Kahane A. Re-viewing the War on Drugs scenarios for the drug problem in the Americas. *Reflections* 2013; 13(3).
29. Jelsma M. Lifting the ban on coca chewing: Bolivia's proposal to amend the 1961 Single Convention. Amsterdam: Transnational Institute, 2011.
30. Valdivia-García J. La SCJN y la marihuana: del temor apocalíptico al debate obligado. *ITESO*; 2016.
31. Insulza JM. The drug problem in the Americas. Washington, DC: Organization of American States General Secretariat, 2013.



- Committee on Illegal Drugs: Senate Canada; 2002.
32. Haas PM. Choosing to Comply. *Epistemic Communities, Constructivism, and International Environmental Politics*: Routledge; 2015: 263.
33. Fultz M, Page L, Pannu A, Quick M. Reconciling Canada's legalization of non-medical cannabis with the UN drug control treaties Ottawa: University of Ottawa Global Strategy Lab, 2017.
34. INCB. INCB Annual Report 2010. Vienna: International Narcotics Control Board, 2011.
35. Walsh J, Ramsey G. Uruguay's drug policy: Major innovations, major challenges. Washington, DC: Brookings, 2015.
36. Cockayne J, Walker S, Walker MS. What comes after the War on Drugs: Flexibility, fragmentation or principled pluralism. New York: United Nations University; 2015.
37. Riley D. Drugs and drug policy in Canada: A brief review & commentary, 1988.
38. UNODC. Notes for an Address by Hilary Geller during the General Debate on the Special Session of the UN General Assembly on the World Drug Problem at the 59th Session of the United Nations Commission on Narcotic Drugs Commission on Narcotic Drugs; 2016; Vienna; 2016.
39. Bewley-Taylor D, Jelsma M, Rolles S, Walsh J. Cannabis regulation and the UN drug treaties. Washington, DC: Canadian Drug Policy Coalition, Canadian HIV/AIDS Legal Network, Global Drug Policy Observatory, International Centre on Human Rights and Drug Policy, Mexico United Against Crime, Transform Drug Policy Foundation, Transnational Institute, Washington Office on Latin America, 2016.
40. Drugs CPSSCoI, Nolin PC, Kenny C. Cannabis: Our position for a Canadian public policy: Report of the Senate Special
41. Wood E, Werb D, Kazatchkine M, et al. Vienna Declaration: A call for evidence-based drug policies. *Lancet* 2010; 6736(10): 2.
42. Werb D. Heroin prescription, HIV, and drug policy: Emerging regulatory frameworks. *U Oregon Law Rev* 2013.
43. Werb D, Kamarulzaman A, Meacham M, et al. The effectiveness of compulsory drug treatment: A systematic review. *Int J Drug Pol* 2016; 28: 1-9.
44. De Lima L, Sweeney C, Palmer JL, Bruera E. Potent analgesics are more expensive for patients in developing countries: a comparative study. *J Pain Palliat Care Pharmacother* 2004; 18(1): 59.
45. WHO, UNODC, UNAIDS technical guide for countries to set targets for universal access to HIV prevention, treatment and care for injecting drug users: 2012 revision. Geneva: WHO/UNODC/UNAIDS, 2012.
46. CND. Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem Vienna: Commission on Narcotic Drugs, 2009.