

THE RISE AND DECLINE OF CANNABIS PROHIBITION

THE HISTORY OF CANNABIS IN THE UN DRUG
CONTROL SYSTEM AND OPTIONS FOR REFORM

Introduction and summary





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Cannabis has long been a substance drawing much attention within the international drug control regime, a system currently based upon the 1961 Single Convention on Narcotic Drugs. Today the regime landscape is changing. Faced with particular challenges and democratic decisions, a number of jurisdictions are moving beyond merely tolerant approaches to the possession of cannabis for personal use to legally regulating markets for the drug. In November 2012 voters within the U.S. states of Colorado and Washington passed ballot initiatives to tax and regulate cannabis cultivation, distribution and consumption for non-medical purposes. Just over a year later, Uruguay legislated state regulation of the entire chain of the domestic cannabis market for medical, industrial and recreational use. These policy shifts go well beyond the permitted prohibitive boundaries of the UN drug control conventions. They represent a break with an historical trajectory founded on dubious science and political imperatives. And they have thrown the global regime into a state of crisis, as this report will argue.

This publication is a joint effort of the Transnational Institute in Amsterdam and the Global Drug Policy Observatory at Swansea University. Research has been going on in various stages for about two years, and interim results were presented at the Seventh Annual Conference of the International Society for the Study of Drug Policy at the *Universidad de los Andes*, in Bogotá, in May 2013 and further discussed in an expert seminar on cannabis regulation in October 2013 in Amsterdam. Many academics, government officials and experts from NGOs and international agencies have provided useful comments on earlier drafts, but needless to say the end result is the sole responsibility of the authors. This final report will be first presented at the 57th session of the UN Commission on Narcotic Drugs (CND) in Vienna, 13-21 March 2014.

The history of cannabis control

The cannabis plant has been used for spiritual, medicinal and recreational purposes since early mankind. The first chapter of this report describes in great detail the early history of international control and how cannabis was included in the existing UN drug control system. Prior to the construction of a multilateral legal regime to control a range of psychoactive substances, cannabis was subject to a range of prohibition-based control measures within individual nation states. Early examples from the nineteenth century, within the Arab world, some Mediterranean states, Brazil and South Africa for instance, were often implemented as a means of social control of groups operating on the fringes of society.

Internationally, the drive to control psychoactive substances was initially concentrated on opium, in particular in

China, during the early years of the twentieth century. For cannabis, several countries had opted for more regulatory than prohibitive models of control, and evidence was already available early on to suggest that, while not harmless, cannabis was not as dangerous as sensationalist reports suggested. Despite a lack of agreement among delegates to the first international meetings on the need to add cannabis to the agenda, it was not long before cannabis was drawn into the multilateral framework. While many delegates lacked any knowledge of the substance and were consequently bewildered by inclusion of cannabis in the negotiations, the efforts of Italy, with support from the United States, ensured that concern about “Indian Hemp” was mentioned in an addendum to the 1912 International Opium Convention. Following World War I, efforts to further develop the international drug control system under the auspices of the League of Nations saw the drug become the subject of increased attention. This time it was the Egyptian delegation, with support from the United States again, employing hyperbole and hysteria rather than the available scientific evidence base to help ensure cannabis be recognised as addictive and dangerous as opium.

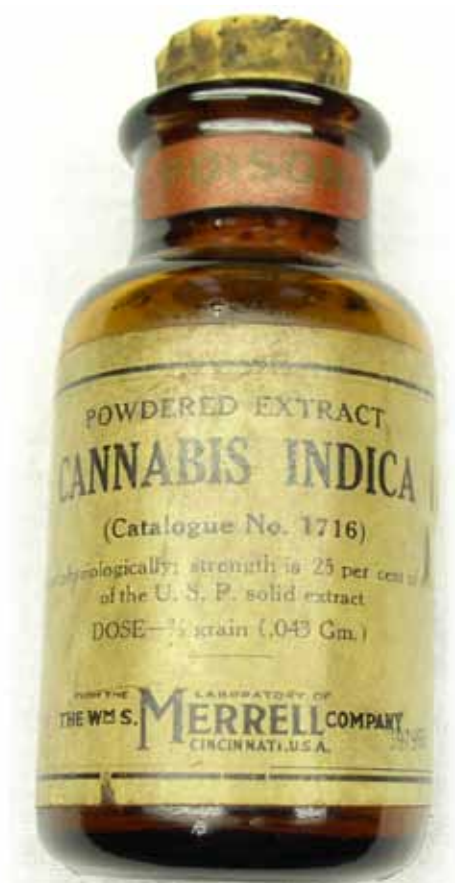
international anti-cannabis campaign. Efforts to tighten controls with the 1936 Convention for the Suppression of the Illicit Traffic in Dangerous Drugs, however, largely failed. The U.S.’s ability to overcome opposition or apathy toward its staunch belief in outlawing the non-medical and non-scientific use of cannabis failed would increase a decade later in the post-war environment.

After 1945 Washington, D.C. exploited its newfound super-power status and dominance within the United Nations to push successfully for more stringent control of cannabis at the international level. Despite the evidence undermining U.S. messages concerning addiction, its role as a gateway drug and its links to criminality, the trend to prohibit the recreational use of cannabis became integral in developing a new “Single” convention that would replace the existing drug control treaties, cobbled together piecemeal since 1912. Beginning in 1948, the process was to entail three drafts and considerable debate about the place of cannabis within the unifying instrument. Vigorous U.S. endeavour, including the use of unreliable scientific data and considerable influence over the recently established WHO, did much to ensure that cannabis was condemned within the 1961 Single Convention as a drug with particularly dangerous properties. Cannabis never passed the test of a scientific review by WHO experts against the criteria required for inclusion of any psychoactive substance in the UN schedules of controlled drugs.

With the passage of the Single Convention, cannabis became classified as one of the most dangerous psychoactive substances under international control considered to have hardly any therapeutic value. In spite of concerns regarding traditional uses in many Asian and African countries, the Convention’s final form reflected the dominance of Western states within the negotiation process. Abolition of the “use of cannabis, cannabis resin, extracts and tinctures of cannabis for non-medical purposes” was required “as soon as possible but in any case within twenty-five years”. The only deviation from the zero-tolerance ethos of the treaty was the omission of leaves and seeds from the Convention’s definition of cannabis, which allowed the traditional and religious uses of *bhang* to continue in India.

A decade after the Single Convention, and displaying growing confusion concerning scheduling criteria within the still developing treaty system, the international community chose to include the main active principle of cannabis, *delta-9-THC* or *dronabinol*, within the 1971 Convention on Psychotropic Substances; a treaty that aimed to bring under international control psychoactive substances that had not been included within the 1961 Single Convention, many of them produced by the pharmaceutical industry. The UN drug control treaty system subsequently expanded further with the 1988 Convention against Illicit Traffic, introducing a number of stricter provisions establishing cultivation, trade and possession as a criminal offence.

Collection Hash Marihuana & Hemp Museum Amsterdam/Barcelona



And so cannabis came under international control in the 1925 Geneva Convention, and gradually signatory states started to pass more prohibition-orientated legislation domestically. Driven by growing concerns around the use of cannabis within its own borders, particularly among certain ethnic groups, during the 1930s, the United States moved from playing a supporting role to spearheading an

Ironically, these efforts at the UN aiming to reduce and ultimately eliminate cannabis “abuse” coincided with its growing popularity and increasingly widespread use; a trend that was closely associated with emerging counter-cultural movements within many Western countries, including the U.S., during the 1960s. The response of many governments was to instigate commissions to explore ways to deal with the phenomenon at a national level. Most of the resultant proposals to adopt tolerant approaches to cannabis use were rejected. Within the U.S., the hostile response of the government led a number of states to utilize the opportunities afforded by the federal system to embrace forms of decriminalization of the possession of cannabis for personal use.

Soft defections and INCB responses

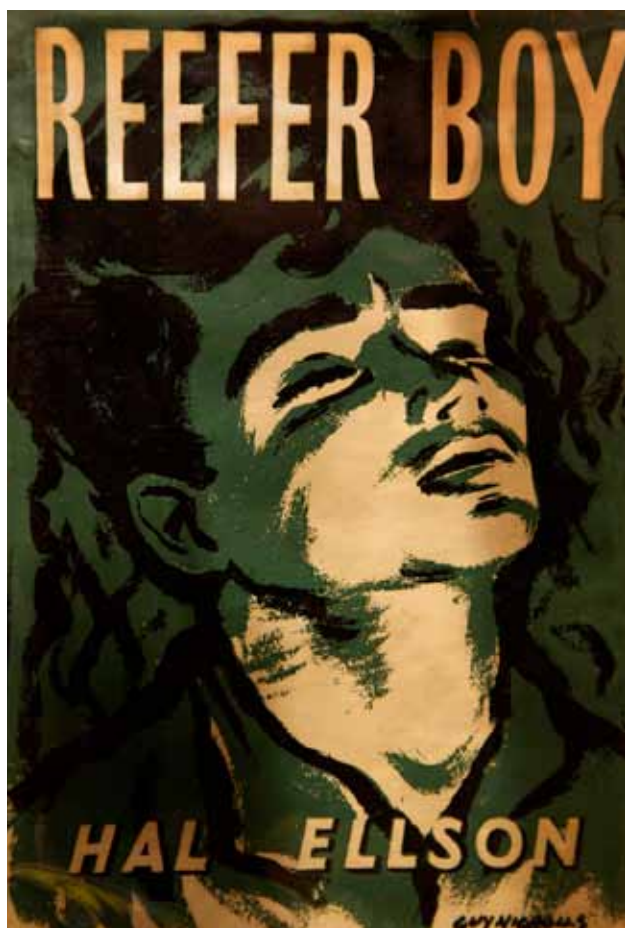
The Netherlands was an isolated example of national politicians taking on board commission advice. However, while early discussions within The Hague displayed a desire to remove the use of cannabis from the domain of criminal justice altogether, there was also an appreciation of the limitations imposed by the treaty framework. Indeed, then as now, while parties to the UN drug control conventions can exploit the considerable inbuilt flexibility to engage with decriminalisation of possession for personal use, including collective cultivation as now is happening in Spain, they cannot go much further without overstepping the treaty system’s legal boundaries. As such, the current policies within the Netherlands and some U.S. states can be seen as a legacy of cannabis policy choices made during what might be regarded as a first wave of ‘soft defection’ from the prohibitive ethos of the Single Convention forty years ago. More recently a second wave of policies that soften prohibition for recreational cannabis

use while respecting the confines of the international treaty framework can be identified around the globe. A “quiet revolution” of decriminalization has occurred in several Latin America and European countries as well as various Australian states and territories. Increasingly widespread engagement with medical marijuana schemes within U.S. states may also be regarded as a third wave.

This soft defection has not gone unnoticed or unchallenged at the UN, however. Since at least the early 2000s, heated discussions within the UN’s central drug policy making body, the CND, and the oppositional position of the International Narcotics Control Board (INCB or Board), which describes itself as the “independent and quasi judicial monitoring body for the implementation” of the UN conventions, revealed cannabis as a key and growing point of tension within the international regime. This dynamic has made a mockery of the much heralded “Vienna consensus” on drug control. Indeed, while the fractures within the consensus around cannabis have been growing over recent years, policy shifts towards legally regulated markets within Colorado and Washington and, at the national level, Uruguay have resulted in treaty breach and created a policy environment in which serious discussion about revising the regime, or nation states’ relationship to it, can no longer be ignored.

As argued in the second chapter of this report, the treaty body that should be assisting member states with this complex process has adopted a singularly unhelpful and obstructionist position on the issue. The INCB has acted as a inflexible defender of the status quo rather than a centre of technical expertise assisting with the careful management of regime change and the development of a more flexible legal structure able to accommodate a range





of approaches to cannabis. The Board, and particularly its current president, Raymond Yans, has shown itself incapable of helping reconcile the different views countries on the best way to deal with cannabis markets. The Board's view is correct that the operation of regulated markets within their territories puts the U.S. and Uruguay at odds with the Single Convention. However, the forthright nature of condemnation is characteristic of a relatively recent shift in its behaviour.

Indeed, between the early 1980s and the United Nations General Assembly Special Session (UNGASS) on drugs in 1998, the Board's stance on cannabis noticeably hardened. It moved away from factual descriptions of different policy approaches (for example noting that the Dutch coffeeshop system, which is legally justified via the "expediency principle", was within the parameters of the treaties) to progressively more vigorous attacks on calls for drug "legalization". Only by the mid-1990s the INCB adopted its current hostility towards Dutch coffeeshops, and was pushing for a tightening up of the UN system, including the incorporation of the plant's leaves in the definition of cannabis. Within the context of ongoing soft defection around cannabis possession and use in various parts of the world, such a defensive position continued during the UNGASS decade (1998-2008). The Board showed its hostility by increasingly harsh statements and "naming and shaming" more tolerant countries in its Annual Reports as well as concomitantly trying to establish an anti-cannabis agenda within the CND. This was perhaps understandable,

the treaty body being pushed into a defensive position and determined to defend the extant form of the regime in the lead-up to the 2009 High Level Segment of the CND to review the targets set in 1998. Among them was the ambitious aim of "eliminating or reducing significantly" the illicit cultivation of cannabis worldwide by the year 2008.

After 2009, claiming that tolerant approaches as well as medical marijuana schemes were sending the "wrong signals" about the harmfulness of the drug, the INCB attempted to stem the reformist tide especially in light of increasing support for policy approaches that went beyond the flexibility of the treaty framework. As we now know, the INCB's attempts to frame the emergence of regulated cannabis markets as a threat to the "noble objectives of the entire drug control system" had little if any influence upon events with the U.S. and Uruguay. Moreover, recent comments from the Board's president regarding Montevideo's "pirate attitude" to the conventions do little to hide the fact that the regime is facing the greatest challenge in its history, certainly since it has operated under the auspices of the UN.

Scope and limits of treaty flexibility

The existing flexibility or room for manoeuvre in the treaty regime has allowed a variety of cannabis policy practices and reforms to deviate from a repressive zero-tolerance drug law enforcement approach, the legality of which is reviewed in detail in the third chapter. Non-enforcement of drug laws in the case of cannabis, rooted in social acceptance or long history of traditional use, is the reality in quite a few countries. Even though the 1961 Convention obliged traditional, including religious, use of cannabis to be phased out within 25 years (with the exception of *bhang* as mentioned above), the widespread persistence of religious uses in Hindu, Sufi and Rastafarian ceremonies and traditions led to lenient law enforcement practices in a number of Indian states, Pakistan, the Middle East, Northern Africa and Jamaica.

Depending whether the legal system allows for discretionary powers, in several countries more formalised schemes of non-enforcement have been established by providing guidelines for the police, the prosecution and/or the judiciary. In other countries cannabis consumption and possession for personal use are *de jure* no longer a criminal offence. Many varieties of such decriminalization schemes exist, in terms of distinguishing possession or cultivation for personal use from the intent to trade; and whether or not to apply administrative sanctions. Since the treaty requirements do not differentiate between possession and cultivation for personal use, first in Spain and more recently in some other countries, "cannabis social clubs" have started to engage in collective cultivation for personal use.

The inclusion of cannabis and its compounds in the strictest schedules of the conventions was a rejection of its usefulness for therapeutic purposes and an effort to limit its use exclusively to research purposes, for which only very small amounts would be required. Today, however, many countries have rejected this position as scientifically untenable and have established legal regimes recognising the medicinal properties of cannabis.

All these policy practices were interpreted by the implementing countries as respecting the confines of treaty latitude. Most have a solid legal basis, others employ a certain legal creativity, not always acknowledged by the INCB. And sometimes schemes perfectly justifiable in principle have been applied with a “pragmatic” dose of hypocrisy. The strictures of the conventions and the near impossibility to amend them have impelled some countries to stretching their inbuilt flexibility and escape clauses to questionable limits. Examples are the legal contradictions around the backdoor of the Dutch coffeeshops; the expansion of medical marijuana schemes in some U.S. states into recreational use; and the establishment of large-scale commercial cannabis social clubs in Spain. Indeed, while a fundamental change in cannabis policy is increasingly viewed as a legitimate option to consider in various parts of the world, the reputational (and possibly economic) costs of treaty breach are likely to deter most states from moving beyond some form of soft defection.

Options and obstacles for treaty reform

The political reality of regulated cannabis markets in Uruguay, Washington and Colorado operating at odds with the conventions makes it unavoidable to discuss options for treaty reform or approaches that countries may adopt to adjust their relationship with the regime. As explained in detail in the final chapter in this report, there are no easy options; they all entail procedural complications and political obstacles. Possible routes to move beyond the existing framework and create more flexibility at the national level include: the rescheduling of cannabis by means of a WHO review; treaty amendments; modifications *inter se* by a group of like-minded countries; and the individual denunciation of the Single Convention followed by re-accession and a reservation, as recently accomplished by Bolivia in relation to the coca leaf.

The chosen path for reform would be dependent upon a careful calculation around the nexus of procedure, politics and geopolitics. The current system favours the status quo with efforts to substantially alter its current form easily blocked by states opposing change. That group remains sizeable and powerful, even in light of the U.S. federal government’s awkward position after the Colorado and Washington referenda. A coordinated initiative by a group of like-minded countries agreeing to assess possible routes and deciding on a road map seems the most likely scenario

for change and the possibility for states to develop legally regulated markets for cannabis while remaining within the confines of international law. Such an approach might even lead to the ambitious plan to design a new “single” convention. Such an option would address far more than the cannabis issue and could help reconcile various inconsistencies within the current regime such as those related to scheduling. It could improve UN system-wide coherence relative to other UN treaty obligations, including human rights and the rights of indigenous peoples. A new convention could borrow from other UN treaties and institute much-needed inbuilt review and monitoring mechanisms. Cannabis might be removed from the drug control apparatus altogether and placed within an instrument modelled on the WHO Tobacco Convention. Another option would be to encourage the UN General Assembly to use its authority to adopt treaty amendments, all the more interesting in light of the upcoming UNGASS on drugs in 2016.

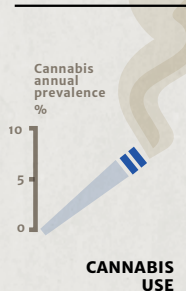
Although the path ahead remains unclear, one thing is certain. The discussion of these and other options are no longer mere reformist fantasies. The cracks in the Vienna consensus have expanded to the point of treaty breach. And tensions are growing exponentially, with criticism of the existing framework no longer confined to hushed conversations on the fringes of the CND. Indeed, in 2013 a strong call for more flexibility came from the Organization of American States. For the first time a multilateral organisation engaged seriously in discussion about cannabis regulation and, more broadly, the search for policy alternatives to the “war on drugs”.

There are certainly many good reasons to question the treaty-imposed prohibition model for cannabis control. Not only is the original inclusion of cannabis within the current framework the result of questionable procedures and dubious evidence, but our understanding of both the drug itself and the dynamics of the illicit markets has increased enormously. Indeed, evidence shows how the implementation of the prohibitive model has failed demonstratively to have had any significant and sustained impact upon reducing the extent of the market. Rather it has imposed heavy burdens upon criminal justice systems; produced profoundly negative social and public health impacts; and created criminal markets supporting organised crime, violence and corruption. Having long accommodated various forms of soft defection from its prohibitive ethos, the regime has reached a watershed moment. In the face of efforts to implement cannabis policies that better suit the needs of individual nations and populations, the question facing the international community is no longer whether there is a need to reassess and modernize the UN drug control system, but rather when and how.

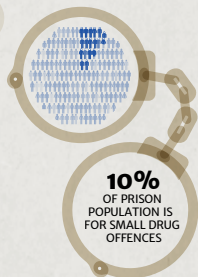
WHY IS URUGUAY REGULATING NOT CRIMINALISING CANNABIS?



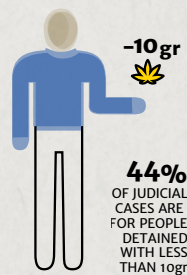
FAILURE OF WAR ON DRUGS



FILLING PRISONS

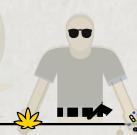


TARGETING USERS NOT JUST TRAFFICKERS



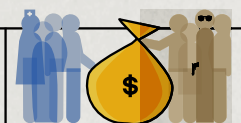
UNDERMINE THE ILLEGAL MARKET

URUGUAY'S POLICY OF ALLOWING PERSONAL CONSUMPTION BUT PROHIBITING TRADE AND PRODUCTION PUSHED DRUGS ECONOMY INTO CRIMINAL HANDS



CRIMINAL INVOLVEMENT IN PRODUCTION INCREASED LIKELIHOOD OF CANNABIS USERS ALSO COMING INTO CONTACT WITH HARD DRUGS SUCH AS COCAINE PASTE (PACO)

INVEST MONEY IN HEALTH, EDUCATION, TREATMENT AND PREVENTION



NATIONAL DRUG COUNCIL BELIEVES:

\$30-40million dollars can be diverted from criminal networks

“The traditional approach hasn't worked. Someone has to be the first [to try this]”



President José Mujica of Uruguay

HOW WILL URUGUAY'S REGULATION OF CANNABIS WORK?

REGULATIONS

NO SALE TO MINORS

-18

PENALTIES FOR DRIVING UNDER INFLUENCE



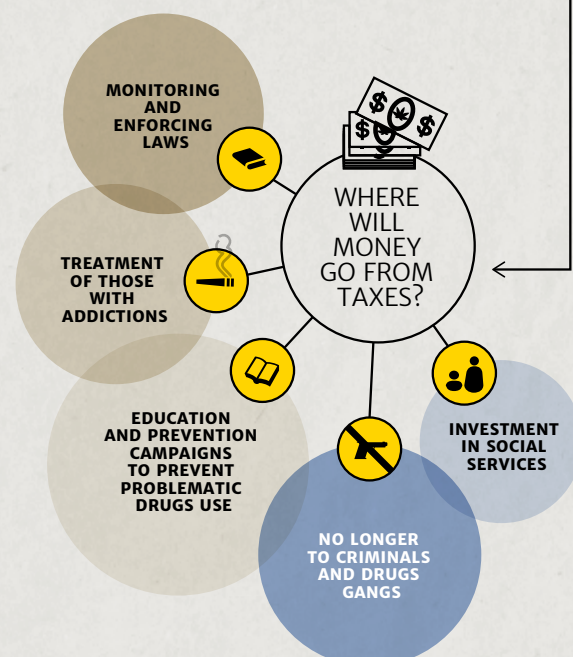
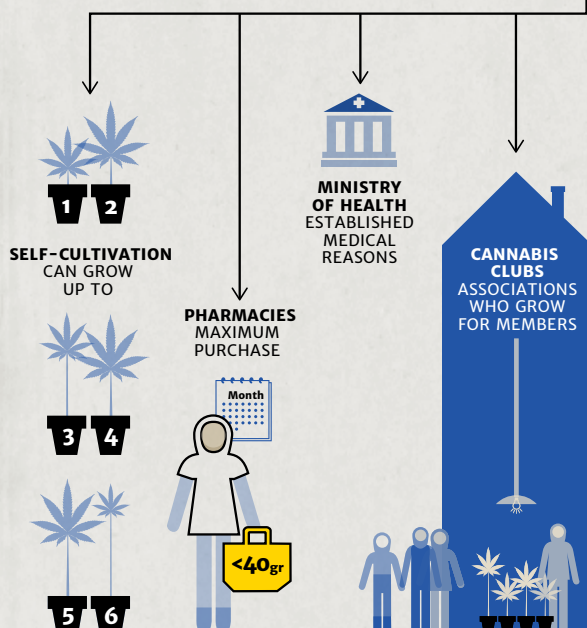
NO ADVERTISING

NO CONSUMPTION IN PUBLIC PLACES



INSTITUTE FOR REGULATION AND CONTROL OF CANNABIS (IRCCA) TO REGULATE PLANTING, PRODUCTION, PROCESSING, DISTRIBUTION, SALES AND MONITORING

WHERE TO BUY?



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The cannabis plant has been used for spiritual, medicinal and recreational purposes since the early days of civilization. In this report the Transnational Institute and the Global Drug Policy Observatory describe in detail the history of international control and how cannabis was included in the current UN drug control system. Cannabis was condemned by the 1961 Single Convention on Narcotic Drugs as a psychoactive drug with “particularly dangerous properties” and hardly any therapeutic value. Ever since, an increasing number of countries have shown discomfort with the treaty regime’s strictures through soft defections, stretching its legal flexibility to sometimes questionable limits.

Today’s political reality of regulated cannabis markets in Uruguay, Washington and Colorado operating at odds with the UN conventions puts the discussion about options for reform of the global drug control regime on the table. Now that the cracks in the Vienna consensus have reached the point of treaty breach, this discussion is no longer a reformist fantasy. Easy options, however, do not exist; they all entail procedural complications and political obstacles. A coordinated initiative by a group of like-minded countries agreeing to assess possible routes and deciding on a road map for the future seems the most likely scenario for moving forward.

There are good reasons to question the treaty-imposed prohibition model for cannabis control. Not only is the original inclusion of cannabis within the current framework the result of dubious procedures, but the understanding of the drug itself, the dynamics of illicit markets, and the unintended consequences of repressive drug control strategies has increased enormously. The prohibitive model has failed to have any sustained impact in reducing the market, while imposing heavy burdens upon criminal justice systems; producing profoundly negative social and public health impacts; and creating criminal markets supporting organised crime, violence and corruption.

After long accommodating various forms of deviance from its prohibitive ethos, like turning a blind eye to illicit cannabis markets, decriminalisation of possession for personal use, coffeeshops, cannabis social clubs and generous medical marijuana schemes, the regime has now reached a moment of truth. The current policy trend towards legal regulation of the cannabis market as a more promising model for protecting people’s health and safety has changed the drug policy landscape and the terms of the debate. The question facing the international community today is no longer whether or not there is a need to reassess and modernize the UN drug control system, but rather when and how to do it.

Transnational Institute

Since 1996, the TNI Drugs & Democracy programme has been analysing the trends in the illegal drugs market and in drug policies globally. The programme has gained a reputation worldwide as one of the leading international drug policy research institutes and a serious critical watchdog of UN drug control institutions. TNI promotes evidence-based policies guided by the principles of harm reduction and human rights for users and producers, and seeks the reform of the current out-dated UN conventions on drugs, which were inconsistent from the start and have been overtaken by new scientific insights and pragmatic policies that have proven to be more successful. For the past 18 years, the programme has maintained its focus on developments in drug policy and their implications for countries in the South. The strategic objective is to contribute to a more integrated and coherent policy – also at the UN level – where drugs are regarded as a cross-cutting issue within the broader development goals of poverty reduction, public health promotion, human rights protection, peace building and good governance.

Global Drug Policy Observatory

National and international drug policies and programmes that privilege harsh law enforcement and punishment in an effort to eliminate the cultivation, production, trade and use of controlled substances – what has become known as the ‘war on drugs’ – are coming under increased scrutiny. The Global Drug Policy Observatory aims to promote evidence and human rights based drug policy through the comprehensive and rigorous reporting, monitoring and analysis of policy developments at national and international levels. Acting as a platform from which to reach out to and engage with broad and diverse audiences, the initiative aims to help improve the sophistication and horizons of the current policy debate among the media and elite opinion formers as well as within law enforcement and policy making communities. The Observatory engages in a range of research activities that explore not only the dynamics and implications of existing and emerging policy issues, but also the processes behind policy shifts at various levels of governance.