

THE BECKLEY FOUNDATION
DRUG POLICY PROGRAMME



**An Overview of *Cannabis Policy:*
*Moving Beyond Stalemate***
(The Report of the Beckley Foundation
Global Cannabis Commission – September 2008)

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SUMMARY

A group of five leading authorities on cannabis and drug policy, Professors Robin Room, Benedikt Fischer, Wayne Hall, Simon Lenton and Peter Reuter, were commissioned and assisted by Amanda Feilding, Director of the Beckley Foundation, to undertake a review of the current evidence regarding cannabis and its place in the international drug control system. The policy context of this undertaking lies in the UNGASS review of the performance of the international drug control system, which will result, at next year's Commission on Narcotic Drugs (CND), in a high level meeting at which ministers will agree on the future direction of drug control efforts. The objective of the Beckley Foundation's Global Cannabis Commission was to provide a comprehensive overview of the evidence relating to cannabis in a way that is useful and accessible for policy makers. The resultant *Report* discusses the drug's production, supply and consumption, the harms arising from both the use of the drug and its prohibition, and the role of the present system of regulation in managing these elements. It concludes that current control regimes are either ineffective or inconsistent, and challenges policy makers to confront these realities, and agree a more rational way forward for international cannabis control. It further provides an analysis of how individual countries or a group of countries can best pursue reform at the international level.

societies and by a bohemian fringe in the developed world, to being a normalized facet of adolescence in Europe, North America and Australasia. Cannabis has been included within international treaties since the 1920s and is currently prohibited under the highest level of control, with cannabis accounting for the majority of drug law arrests in most countries around the world. A growing number of voices have raised questions about this policy arguing: that the harms of cannabis are not commensurate with its present status as a controlled drug; that the consequences flowing from its illicit status are worse than those connected with its use; that given these facts the state has no need to intervene in private consumption, and should not do so. Against these arguments, others contend that the recent expansion in high potency cannabis has led to increasing mental health problems amongst users, particularly young users, and that the prohibition of the drug deters and thus limits these harms. What is clear from the *Report's* findings, however, is that there is a wide divergence of policy approaches to cannabis around the world, none of which have significantly reduced the scale of the market, and that trends in the prevalence of consumption appear to be more influenced by poorly understood, transnational social, cultural and economic factors than cannabis control laws. The Cannabis Commission set out to examine the evidence on the range of policy approaches, and to devise policy recommendations according to its evaluation of the evidence.

THE CONTENTS OF THE REPORT

The Cannabis question

The *Report* is introduced by highlighting cannabis as an 'issue,' emphasising that the drug's use has grown enormously over the past 50 years, going from a minority drug consumed in a few traditional

Cannabis and Health

The subsequent chapter opens by calling for any decision on cannabis's legal status to be based upon scientific principles. At the same time, it signals an awareness of the political factors intervening in what would, ideally, be knowledge-driven policy: "a finding of adverse effects does not settle the issue of the legal status of a commodity; if it did, alcohol, automobiles and stairways, for instance, would all

be prohibited,” as their use results in considerable harm. Instead, the *Report* argues, these adverse effects represent one of several factors to be accounted for in a cost-benefit analysis.

The present array of research evidence relating to the consequences of cannabis use for health and psychological well-being is then assessed. Amongst the acute effects, the impairment of driving skills and changes in immunological and reproductive systems are discussed, alongside foetal development and maternal use. In terms of chronic long term usage, the *Report* considers the effects on respiration, cardiovascular function and cognition, with the frequent mixing of the drug with tobacco representing a sizeable additional hazard for the lungs. Meanwhile, daily use and dependence are acknowledged as constituting a problem for a minority. The problems around adolescent use are outlined, before a wide-ranging review of the drug’s influence on mental health, which has been hotly debated in the UK in recent years. The research is examined and found to be conflicted. Although on balance the *Report* concludes that there is an increased risk of psychotic symptoms for cannabis users, particularly when use has commenced at an early age or where an underlying biological predisposition exists. In summary, the authors sift the overall evidence related to health effects prior to concluding that, while cannabis does pose a range of potential health problems across these domains, these are “modest by comparison” to many other illicit drugs, as well as legal ones such as alcohol and tobacco.

The Cannabis Prohibition Regime

The *Report* goes on to examine the production, supply and use of cannabis within the context of the present regulatory regime, emphasising the effects that the prohibition of cannabis has upon patterns of use and distribution, and exploring the actual operation of the regime in terms of its impact on individuals.

The first point demonstrated is the sheer prevalence of cannabis. According to the estimate of the United Nations Office on Drugs and Crime (UNODC), there are some 160 million people using it. Indeed, while the drug is prohibited in “every country apart from the Netherlands, experimentation with cannabis is a routine part of the experience of adolescence in many Western countries.” (p. 66). More males than females use the drug, and a “substantial fraction” of those who try it go on to regular use, with a “modest share” developing dependence problems. Price and profitability is explored, and it is calculated that despite its prohibited status cannabis remains competitive with alcohol in terms of the psychoactive effect one gets for the price. Despite this, it is much more expensive than it would be if legal regulation obtained.

The cannabis market is commensurate with these high levels of consumption. Official global estimates for production put the figure at around 40,000 metric tons, but the authors point out the enormous difficulties in the way of making any such estimate. Many of the countries reporting cannabis production and use do not have the data systems that can enumerate its scale. A large proportion

of the using population, at some point in their cannabis careers, are involved in growing their own supply, therefore imports from “source countries” such as Morocco make up a diminishing fraction of the developed world’s consumption. Most cannabis produced - and a total of 134 states reported cannabis production in their territory to UNODC in 2007 - is now for domestic consumption. Accordingly, the distribution chain is very short relative to other illegal psychoactives, with major implications for traditional modes of supply interdiction. Another characteristic of the cannabis market to which the *Report* helpfully draws attention is the general absence of violence it involves, in striking contrast to certain other illegal drugs, such as cocaine. Cannabis is distinctive in that it is very frequently sourced within social networks; in short, most dealing is done between friends.

The legal response to cannabis does vary between countries, but most of this variation derives from the application of laws, while the laws themselves are fairly uniform. “It is a tale about practical law enforcement, pure and simple.” (p.76). There are still high levels of arrest for use/possession in many countries, though there is little evidence to indicate that this has a deterrent effect, and the mass market nature of the drug means that only a small minority of users are arrested. The *Report* notes the large increase in those seeking treatment for cannabis-related problems in recent years, and speculates on the reasons for this increase. It considers possibilities that; it simply reflects increased prevalence; it stems from a greater intensity of use, (for example, more people using on a daily basis); it represents increased referrals from criminal justice systems (noting that this is clearly a factor in the United States) or that it is a function of increased awareness of harms associated with the drug. The reasons for this growth in demand for treatment remain unclear, but it serves as a useful reminder that “problems associated with a drug are determined by many factors and are not a timeless constant, a point that is well understood in the alcohol field.” (p.87)

The *Report* then goes on to consider cannabis in the context of the international drug control regime, observing that, although it is the most commonly used illicit drug, it is rarely a prime concern for the regime. It gives a brief historical account of the regime, and then reviews current performance with respect to cannabis, reminding us of the drug’s scheduling in the treaty system - under the strictest possible regime category in the 1961 Single Convention on Narcotic Drugs - and that the 1988 Trafficking Convention requires possession to be a criminal offence.

In a revealing discussion of the interplay of the regime’s agencies on the issue of cannabis and its derivatives, the authors note that the International Narcotics Control Board (INCB) is quite willing to go beyond its brief and intervene in the internal affairs of UN Member States. It gives the example of *Dronabinol*, the proprietary form of THC prescribed in the US, which the World Health Organization (WHO) recommended for rescheduling under the conventions by the political body, the CND, due to its medical benefits. The INCB

and some member states resisted this move. The Executive Director of the UNODC also intervened to persuade his WHO counterpart against re-scheduling. The authors note that, within the international drug control system, it is the WHO's job to decide on scheduling, and neither the INCB nor the UNODC is given a role by the treaties. This example shows the difficulty of dealing dispassionately within the UN system on any issue related to cannabis.

As noted, an estimated 80% of the world illegal drug users are cannabis consumers. The *Report* points out that their inclusion therefore lends the issue a gravity it would otherwise lack. Cannabis is seen to play a powerful rhetorical role within the present regulatory regime. Amongst the public, support for prohibition appears strong. However, the authors argue that governments must balance an alleged deterrent effect against the very real harms caused by the policy of prohibition itself. The illicit market, worth tens of billions, represents one of the “unintended consequences” recently acknowledged by UNODC Executive Director, Mr. Antonio Maria Costa. In addition to this market - a challenge in and of itself to governmental authority - there are mass arrests and prosecutions of cannabis users. While the *Report* reminds readers not to exaggerate the effects of these measures, their symbolic value in alienating and marginalising users from “normal” society should be fully recognized. Moreover, the authors acknowledge that the high degree of discretion around cannabis given to police and prosecutors can lead to discriminatory approaches to arrest and punishment, and can facilitate the harassment and exclusion of minority groups by ethnicity, class and so on.

‘Softening Prohibition.’

In reviewing the existing models of cannabis control that have been implemented at national and sub-national levels around the world, the *Report* provides a useful typology of control regimes that have departed from the standard approach of full criminal prohibition; a process that has taken place within the boundaries of the international drug control framework. The alternative cannabis use control regimes are characterized by considerable heterogeneity in their key characteristics and critical analysis is complicated by differences between the ‘law on the books’ and the ‘law in action.’ That is to say *de jure* and *de facto* reforms. As the *Report* highlights, debate around cannabis use control is made more problematic by the use of a range of terms that have not been consistently applied and often remain unclear in meaning. In moving to clarify these issues, the authors offer an international policy survey using four regime categories that deviate in various ways from what is termed ‘full prohibition.’ The first, prohibition with cautioning or diversion (‘depenalization’), discusses policy developments in France, Australia, Canada, Britain, the United States of America and Brazil. The second category, prohibition with civil penalties (‘decriminalization’), explores policy in Belgium, Italy, the Czech Republic, Portugal, Denmark and Australia. Discussion of the third regime category, partial prohibition (including ‘*de facto* legalization,’ e.g. prohibition with an expediency principle, and ‘*de jure*’ legalization), looks at policy in The Netherlands, Germany, Austria, Spain, the United States, Colombia, Switzerland

and India. The fourth category, ‘Medical Marijuana Use Control’ is deemed to be ‘A Special Case’ and discusses developments in North America. Having provided an expansive picture of various cannabis control reform regimes, the *Report* highlights the important fact where use of the drug is depenalized or permitted on a *de facto* or *de jure* basis, the supply and availability of cannabis for the purpose of personal possession and inevitable use ‘inevitably becomes a key practical matter.’ (p. 121.) That most standing drug control laws in the reform systems discussed strictly prohibit and provide heavy punishment for cannabis supply activities, means that cannabis users may be exposed to considerable criminal enforcement and consequences which the alternative use control measures are in fact aiming to reduce or avoid. It is pointed out that some cannabis use control reform regimes have included provisions for a reduction of penalties for limited cultivation for personal use. However, despite a number of proposals in a range of nations, there are currently few working examples of cannabis supply regulation. As the authors stress, ‘...even in the most far reaching regimes, there is no explicit legalization of production or distribution of cannabis products, which would involve numerous provisions of the international conventions beside those on use and possession.’ (p. 100.) The authors do however provide an analysis of how a regulated cannabis market might be constituted and highlight how such a regime would enable the application of strict market controls to try to hold down levels of use and harm, including taxation, minimum legal age for use and purchase, and labeling and potency limits. They emphasise that such a regime would need to be closely monitored to pick up and address any unintended adverse consequences.

The Impacts of Cannabis Policy Reforms

Having discussed alternative regimes of cannabis use control, the *Report* moves on to review the existing evidence concerning their impact. Foregrounding the discussion with a number of caveats and issues concerning data limitation, the authors use available literature to conduct a series of policy impact studies. These examine situations in the United States, Australia, Portugal, UK, The Netherlands, Italy, and Switzerland and incorporate a range of metrics including rates of use and indicators of harm. In the case of Australia, the social impacts of civil versus criminal penalties are also discussed, while with regard to The Netherlands discussion includes patterns of use and market impacts. In an effort to review other areas of concern the *Report* examines existing economic analyses of the impact of introducing prohibition with civil penalty schemes on law enforcement and points out the paucity of research concerning the impact of medical marijuana schemes on rates of cannabis use in the general community. Mindful of the methodological flaws within existing research and the pitfalls of cross-country comparisons, the authors conclude that ‘there does not appear to have been any large increase in cannabis use in countries that have maintained the *de jure* illegality of cannabis but implemented reforms which, either at a national or subnational level, have reduced the penalties to civil or administrative sanctions.’ (p. 147) “The evidence on the impact of depenalization in the Netherlands suggests” the authors continue “that it has not resulted in increased prevalence of cannabis use at a community level.” Indeed, “it is also apparent

from a number of the studies that, at least as long as the illegality of cannabis is maintained, the laws and sanctions which apply seem to have, at most, a relatively modest impact on rates of cannabis use.” (p. 142.) Furthermore, as the *Report* shows, research suggests that those reforms which have been undertaken under the existing international framework have reduced, but not eliminated, some of the social impacts of prohibition on individuals. Reforms also appear to reduce the costs to the criminal justice system of prosecuting cannabis use offences. It is important to note, however, that these benefits can be undercut by police practices that increase the number of users who are penalized or enforce the law in a discriminatory way.

Beyond the current drug conventions

With the majority of the *Report* considering measures taken within the confines of the extant international drug control regime, the penultimate chapter explores a range of measures that would in one way or another move beyond the limits of the regime. The authors explain how measures could be taken by concerted action by the parties to the current conventions, or by a substantial majority of them. Such measures would involve removing cannabis from the conventions, or fundamentally altering the provisions of the conventions covering cannabis. It is also discussed how other measures could be taken by a single state or by a group of states, and in light of current political viability some options are given more attention than others. As such discussion traverses a varied legal landscape featuring among other options; the rescheduling or descheduling of cannabis in the 1961 Single Convention; reinterpretation, denunciation and denunciation and re-accession with a reservation of the Single Convention; the adoption of a new convention; the addition of cannabis to an existing alternative convention such as the WHO Framework Convention on Tobacco Control; and passing conflicting domestic legislation. The *Report* also devotes space to the consideration of a new treaty on cannabis, including the exploration of issues concerning the auspices under which any future international law might be negotiated. Suggestions include the WHO, UNESCO and interestingly the Council of Europe. The authors make the critical point that any of the paths outlined will certainly face “vociferous opposition from a number of quarters,” notably the INCB, the US and a number of other states. (p. 167.) It is argued that, in any move to revise the place of cannabis within the international system, it would be wise for states to give reassurances that they will continue a commitment to some aspects of the current regime: “in particular to controls on international trade which maintain comity, the principle that other states’ domestic arrangements, for instance of cannabis production, will be honoured.” (p. 168.) As a consequence, denunciation and immediate re-accession with reservations (or post-accession reservation) and negotiation and ratification of a new treaty are recommended as preferred options. They also discuss the political arguments that would be required to support any such reforms, and in particular “framing them in terms of such ideals and principles as human rights and liberties, proportionality, and the minimisation of harms” (p. 168.)

Conclusions and Recommendations.

Aware that making policy recommendations involves “value judgments and assessments of uncertainties” (p. 173) the authors offer a number of recommendations for what constitutes “good policy towards cannabis.” In terms of actions within the current international framework it is recommended that the principle policy concern should be to minimize the adverse consequences of cannabis use, and also of its prohibition, and that consequently there would seem to be no justification for incarcerating an individual for a cannabis possession or use offence, nor for creating a criminal conviction. In light of these factors, the *Report* recommends that a better option is to process violations administratively outside the criminal justice system. Looking beyond the confines of the international drug control regime, the authors recommend that the UN treaty framework should be changed to permit states to adopt, implement and evaluate cannabis regimes within their own borders. This would require changes to the existing conventions or the adoption of a new pre-emptive convention specifically concerned with cannabis. It is noted that, in the absence of such changes, a state can act on its own by denouncing the conventions and re-accessing with reservations, or “simply ignoring at least some provisions of the conventions.” (p. 174.) The *Report* recommends that any future regime which makes cannabis legally available should involve state licensing or state operation of entities producing, wholesaling and retailing the drug. Further, it is posited, the “state should ensure that appropriate information is available and actively conveyed about the harms of cannabis use,” and that advertising should be banned or stringently limited. Finally, the authors recommend that “impacts of any changes, including any unintended adverse effects, should be closely monitored, and there should be the possibility for prompt and considered revision if the policy increased harm.” (p. 174)

ISSUES OF POLICY CONCERN RAISED BY THE BECKLEY FOUNDATION’S GLOBAL CANNABIS COMMISSION REPORT

In addition to describing the policy recommendations contained within the *Report*, we feel that it is useful to further highlight a number of key issues surrounding cannabis policy that have a direct relevance to the way in which the UN system deals with what is clearly the world’s most widely used illicit drug.

A changing market

First, as evidenced at several points within the *Report*, it is becoming increasingly clear that there is a growing disconnect between the tactics and priorities of the current international drug control regime and the realities of the contemporary cannabis market. As mentioned above, traditional so-called cannabis ‘source countries’ are playing a declining role in the market as production in many, particularly western, nations increasingly blurs the boundaries between consumer

and producer states. Indeed, the combination of local and home, including hydroponic, cultivation, frequent sourcing within informal social networks and the resultant relatively short distribution chains poses a major challenge to the law enforcement, interdiction and supply oriented approach embedded within the treaty system; a system, it must be recalled, that in its current form was developed nearly fifty-years ago within a very different socio-cultural environment. As noted elsewhere, “Put simply, how can a global system effectively deal with an illegal substance that is not only produced by agricultural processes – that is to say in outdoor plots – in almost every country in the world, but is also increasingly grown in indoor settings close to the point of consumption?” The supply reduction strategies applied to cocaine and heroin that incorporate targeted eradication in source countries, interdiction along the main supply routes and intelligence led enforcement against major traffickers, clearly have decreasing relevance in such a diverse and constantly evolving cannabis market. It seems that, in light of this extremely diverse supply chain, the fact that the use of cannabis is culturally established in a large number of countries, and that demand reduction efforts appear to have only a modest impact, a new strategic approach is required. (See *The World Drug Report: A Response for the International Drug Policy Consortium*, IDPC, September 2008, p.8 <http://www.idpc.info/php-bin/documents.pl?ID=1000179>) The strength of such a position is bolstered by the practical limitations of the reform regimes discussed within the *Report*. The fact that approaches to ‘soften prohibition’ within the confines of the international framework do not adequately address the supply of cannabis points to the need for serious UN level discussion of revisiting the treaties. It is also worth noting here that although the majority of cannabis markets are surprisingly free from violence in comparison to other illegal drug markets, concerns were raised at the *Report’s* launch Seminar by participants from Latin America that the *Report* had overlooked significant levels of violence and harms in Latin America’s cannabis markets, a further indication of the need for reform at the international level. Progress here, however, is constrained by a complex mix of organizational inertia, politics and procedure.

Appropriate scheduling

The second issue to be explicitly addressed is that of scheduling; another related characteristic of the regime’s strained relationship to the realities of the cannabis market. As emphasized within both recent UNODC *World Drug Reports* and the speeches and statements of Mr. Costa, under the terms of the Single Convention cannabis is treated with the same degree of severity as cocaine and the opiates. This is the case despite, as noted above, the fact that potential health problems posed by cannabis are modest by comparison to many other illicit drugs, as well as legal ones such as alcohol and tobacco. The existence of medical marijuana schemes in some nations also presents further potential problems in terms of the appropriateness of the current scheduling regime. How some countries have responded to this issue is a significant and growing point of tension within the operation of the current UN based control system. This is reflected in the periodic annoyance displayed by some of the traditional cannabis

producing states (and some states where widespread cannabis use is a relatively new phenomenon), in response to what they see as a number of predominantly western European states introducing lenient policies concerning consumption like the variations discussed in the Cannabis Commission’s *Report*. For example, at the 2008 CND in a resolution titled “Reducing demand for illicit drugs”, a group of Middle Eastern and African countries, including Morocco, voiced its concern that “some States permit the use of substances that are under international control.” While what the Cannabis Commission categorizes as “depenalizing” states or subnational regions are quite within their rights to follow such policies, the international community must, as Mr. Costa noted in the 2006 *World Drug Report*, work to resolve systemic inconsistencies concerning cannabis. Echoing what was said above, and as noted in the International Drug Policy Consortium’s response to this year’s *World Drug Report*, “Although there is currently a lack of political will to take on this challenge, resolution of the dilemma will require an objective reflection on the effectiveness of efforts to stifle supply.” (IDPC, 2008.)

Appropriate enforcement

The third issue concerns the continuing, and in some cases increasing, high level of cannabis related arrests, including the relationship between ‘softening prohibition’ and so-called net-widening. As the *Report* notes, despite a paucity of evidence concerning the effectiveness of a deterrence effect, cannabis arrests account for the majority of drug law arrests in most Western countries. For example, despite a degree of policy liberalization with regard to use of the drug, they accounted for about 75% of all drug arrests in Australia between 1995-2000, while in Germany in 2005 cannabis arrests accounted for 60% of the total; cannabis possession and use offences alone were 45% of the total. In many countries cannabis arrests have risen sharply since the mid-1990s. In Switzerland, for instance, they totalled around 17,000 in 1997 (15,500 for consumption) and rose to over 29,000 (26,000 for consumption) by 2002. (pp. 76-77.) Although arrest is only the first step in the criminal justice process and does not automatically lead to criminal punishment, such high figures do raise important questions concerning proportionality and the deleterious effects of contact with law enforcement authorities (for example, the imposition of criminal records or travel and employment restrictions on large numbers of citizens). If, as seems clear, widespread arrest and punishment of cannabis users does not lead to lower levels of use, it is hard to see why so many western countries devote such a high level of criminal justice resources to this activity. A related concern is that, given that there are millions of users in many countries, and it is not possible to arrest all of them, enforcement is by definition focused on particular groups of users – usually concentrated amongst ethnic minority or socially marginalized groups. Furthermore, and as observed in some parts of Australia, despite a shift away from full prohibition, some states, after introducing reforms, have actually experienced an increase in the numbers of people coming into contact with the criminal justice system. As Hamilton pointed out in 2001, “While there is no significant change in the pattern or prevalence of use of cannabis in South Australia, there has been a paradoxical

increase in the number of people charged with cannabis offences... This increase is viewed as a net-widening effect and is thought to be related to the relative ease of intervention by police under the Controlled Substance Amendment Act.” (Margaret Hamilton, ‘Drug Policy in Australia – Our Own?’ in Jurg Gerber and Eric L. Jensen, (Eds), *Drug War American Style: The Internationalization of Failed Policy and Its Alternatives*, Graland Publishing, 2001, pp. 108-9)

The Beckley Cannabis Commission has pulled together the latest available information and research on this contentious subject, and produced an analysis that challenges policy makers to confront the inconsistencies and differences of approach that currently bedevil international debates on cannabis. The Commission on Narcotic Drugs, in particular, needs to rise above the current sensitivities to develop a coherent and sustainable approach to the control of cannabis – the current situation cannot be described as any form of control.

The full *Report*, together with its *Conclusions and Recommendations*, can be found at:

http://www.beckleyfoundation.org/policy/cannabis_commission.html