



International Narcotics Control Board

Brief on the conformity of Bill C-45, An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts, as passed by the House of Commons, November 27, 2017

Submitted to the Standing Committee on Foreign Affairs and International Trade

13 April 2018

Background

1. The International Narcotics Control Board (INCB) is the independent, quasi-judicial expert body established by the Single Convention on Narcotic Drugs of 1961. The Board is composed of 13 members, each elected by the Economic and Social Council to serve in an independent capacity for a period of five years. Ten of the members are elected from a list of persons nominated by Governments. The remaining three members are elected from a list of persons nominated by the World Health Organization (WHO) for their medical, pharmacological or pharmaceutical experience.
2. INCB is mandated with monitoring the implementation by States of their legal obligations under the following international conventions relative to drug control:
 - The 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol;¹
 - The 1971 Convention of Psychotropic Substances², and;
 - The 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.³
3. In keeping with its mandate, the Board has maintained an ongoing dialogue with the Canadian Government on issues related to drug control, including matters related to the control of cannabis. This dialogue has consisted of several bilateral meetings between the President of the Board and Canadian Government officials, including delegations to the Commission on Narcotic Drugs and the Permanent Representative of Canada to the United Nations in Vienna as well as an extensive exchange of correspondence on the matter with the Government of Canada.
4. In October 2016, a high-level mission to Ottawa took place, led by the President of the Board at the time, Mr. Werner Sipp. The President held high-level talks with the Minister of Foreign Affairs, the Minister of Health, the Chair of the Task Force on Marijuana Legalization and Regulation, and the Parliamentary Secretary to the Ministry of Justice and Attorney-General of Canada.
5. On 15 March 2018, the International Narcotics Control Board Secretariat received a communication from the Clerk of the Standing Committee on Foreign Affairs and International Trade inviting the International Narcotics Control Board (INCB) to participate in the Committee's public hearings on the subject matter of Bill C-45 as it relates to Canada's international obligations.

Scope of INCB's brief to the Committee

6. Given the tight deadlines in which the above-mentioned hearings will be held, the appearance of an INCB representative before the Committee will not be possible. The present Brief is to be considered as a statement of the Board's policy.
7. For the reasons elaborated upon below, the Board views any legislative measures aimed at legalizing and regulating the use of controlled substances for non-medical purposes as a fundamental breach of the international treaty provisions to which State parties to the international drug control conventions are held.
8. Accordingly, the comments provided herein do not examine the provisions of Bill C-45 in detail, as those provisions constitute the modalities of a draft law the very object of which the Board deems

¹ Single Convention on Narcotic Drugs, 1961, as amended by the Protocol amending the Single Convention on Narcotic Drugs, 1961, New York, 8 August 1975, U.N.T.S., vol. 976, p. 105

² Convention on Psychotropic Substances, Vienna 21 February 1971, U.N.T.S., vol. 1019, p. 175

³ United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 20 December 1988, U.N.T.S., vol. 1582, p. 95

to be incompatible with the treaty obligations to which Canada is bound, in particular Article 4 (c) of the 1961 Convention on Narcotic Drugs, as amended by the 1972 Protocol and Article 3, paragraph 2 of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Relevant obligations of State Parties to the international drug control conventions

9. The three international drug control conventions represent a consensus in international drug control and the international legal framework for drug control, evidenced by the fact that they benefit from near universal ratification by States. The conventions are founded upon the concern of Member States for the health and welfare of humankind.

10. In 2016, the United Nations General Assembly convened a Special Session on the World Drug Problem (UNGASS) in which UN Member States, including Canada, unanimously adopted an outcome document reaffirming the centrality of the three international drug control conventions as “the cornerstone of the international drug control system”.⁴

11. By becoming a State party to the drug control conventions, Governments commit to adopting legislative, regulatory and policy measures necessary to ensure the full implementation of their legal obligations under the treaties in their national systems.

12. In particular, the drug control conventions require States to adopt measures for the control of licit trade in narcotic drugs and psychotropic substances as well as the precursor chemicals frequently used in their illicit manufacture, and to facilitate their availability for legitimate medical and industrial purposes while preventing their diversion into illicit channels. They also require States to elaborate strategies for the prevention of drug use and mechanisms to address drug use disorders through treatment, rehabilitation, aftercare and social reintegration. Together with the body of internationally agreed human rights standards and norms, they provide for State responses to suspected drug-related criminality that are humane and proportionate and that are grounded in the respect for human dignity, the presumption of innocence and the rule of law are also a vehicle for facilitating mutual legal assistance and extradition between States and for combating money-laundering. The conventions are founded upon the principle of common and shared responsibility between Member States to address the world drug problem.

13. The general obligations of State Parties to the 1961 Single Convention on Narcotic Drugs are set forth at Article 4.

Article 4

GENERAL OBLIGATIONS

The parties shall take such legislative and administrative measures as may be necessary:

(a) To give effect to and carry out the provisions of this Convention within their own territories;

(b) To co-operate with other States in the execution of the provisions of this Convention; and

*(c) Subject to the provisions of this Convention, **to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs. [emphasis added]***

⁴ “Outcome Document of the 2016 United Nations General Assembly Special Session on the World Drug Problem; Our Joint Commitment to Effectively Addressing and countering the World Drug Problem”, Thirtieth Special Session General Assembly New York, 19-21 April 2016, p. 2. Available at: <https://www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf>

14. The obligation for State Parties to limit the production, manufacture, export, import, distribution of, trade in, use and possession of drugs to medical and scientific purposes is one of the Single Convention's most fundamental provisions, a fact recognised in the UN Secretary General's Commentary:

“The object of the international narcotics system is to limit exclusively to medical and scientific purposes the trade in and use of controlled drugs. From the beginning, this has been a basic principle of the multilateral narcotics system, although all the treaties providing for it authorise some exceptions. The 1912 and 1925 conventions and the 1953 protocol contained provisions incorporating this principle. The gradual extension of the scope of its application is a characteristic feature of progress in this branch of treaty law. It is one of the most important achievements of the single convention that it ended the exceptions permitted in earlier treaties subject only to transitional provisions of limited local application and duration. [...]”⁵

15. While other provisions of the international drug control conventions may lend themselves flexible interpretation, leaving the modalities of implementation to the discretion of States, the obligation contained in Article 4 c) of the Single Convention, and reprised in article 5 (2) of the Convention on Psychotropic Substances, is absolute and unequivocal in nature. Article 4 (c) is a peremptory norm for which implementation is a *sine qua non* of compliance with the international legal drug control framework.

16. As the Board has repeatedly emphasised, legalization and regulation of cannabis for non-medical and non-scientific purposes, as foreseen in Bill C-45, cannot be reconciled with Canada's international obligations under Article 4 (c) of the 1961 Single Convention.

17. It is also inconsistent with Canada's obligations as a Party to the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, in particular Article 3 (2) which requires parties to establish as a criminal offence the intentional possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention.

The Board's public pronouncements on the proposed legalization of cannabis for non-medical purposes by the Government of Canada

18. The Board has repeatedly emphasised that the legalisation and regulation of cannabis for non-medical and non-scientific purposes, including by the Government of Canada would constitute a breach of the country's international obligations under the 1961 Single Convention on Narcotic Drugs. The Board also reiterated that the restriction of use of the narcotic drugs, controlled under the 1961 Convention to medical and scientific purposes was unequivocal and could not be derogated from by a State Party, except in a manner inconsistent with its international obligations.

19. The Board has expressed its position in public statements of the President and other members of the Board as well as in the INCB Annual Reports, writing in 2016:

“223. Canada is party to all three international drug control treaties. The Government has initiated a process that has as its goal the legalization and regulation of access to cannabis for non-medical use. The Board notes that the legalization of the use of cannabis for non-medical purposes is inconsistent with the provisions of the 1961 and 1988 Conventions because the Conventions oblige States parties to limit the use of narcotic drugs exclusively to medical and scientific purposes. That limitation, expressed in article 4, paragraph (c), of

⁵ Commentary on the Single Convention on Narcotic Drugs, 1961, Prepared by the Secretary-General in accordance with paragraph 1 of Economic and Social Council resolution 914 D (XXXIV) of 3 August 1962, United Nations, New York, 1973, p. 108, available at: www.unodc.org/documents/treaties/organized_crime/Drug%20Convention/Commentary_on_the_single_convention_1961.pdf

*the 1961 Convention, is binding on all parties; regulating the use of drugs outside medical and scientific purposes is not allowed under the Convention. The limitation of the use of drugs to medical and scientific purposes is a fundamental principle that lies at the heart of the international drug control framework, to which no exception is possible and which gives no room for flexibility. **The Board urges the Government to pursue its stated objectives — namely the promotion of health, the protection of young people and the decriminalization of minor, non-violent offences — within the existing drug control system of the Conventions.***”⁶

20. Similarly, in the Board’s Annual Report for 2017, released on 1 March 2018, the Board’s pronouncements on Canada’s planned legalisation of cannabis for non-medical purposes can be found at paragraphs 185 and 482:

185. The Board notes with concern that in Canada, draft legislation intended to authorize and regulate the non-medical consumption of cannabis was introduced in the House of Commons in April 2017. The draft legislation, which the Government aims to have adopted by July 2018, provides for a framework for controlling the production, distribution, sale and possession of cannabis for non-medical purposes. As the Board has stated repeatedly, if passed into law, provisions of Bill C-45, which permit non-medical and non-scientific use of cannabis would be incompatible with the obligations assumed by Canada under the 1961 Convention as amended.

[...]

*482. At the end of November 2016, Canada’s task force on cannabis legalization and regulation published its final report. The report contained advice on the design of a framework for the legalization, regulation and restriction of access to cannabis. Along with research by other ministries, such as that reflected in *Measuring Illicit Cannabis Seizures in Canada: Methods, Practices and Recommendations*, the final report of the task force was part of the Government’s data collection effort in advance of measures to legalize access to cannabis in July 2018. Bill C-45, introduced by the Minister of Justice and Attorney General of Canada on 13 April 2017, would permit the non-medical use of cannabis. If the bill is enacted, adults aged 18 years or older will legally be allowed to possess up to 30 grams of dried cannabis or an equivalent amount in non-dried form. It will also become legal to grow a maximum of four cannabis plants simultaneously for personal use, buy cannabis from licensed retailers, and produce edible cannabis products. **The Board wishes to reiterate that article 4 (c) of the 1961 Convention restricts the use of controlled narcotic drugs to medical and scientific purposes and that legislative measures providing for non-medical use are in contravention of that Convention.***⁷

⁶ INCB Annual Report, 2016, p. 31, available in English and French at: <http://www.incb.org/incb/en/publications/annual-reports/annual-report.html>

⁷ Report of the International Narcotic Control Board for 2017 (E/INCB/2017/1), available in English and French at: <http://www.incb.org/incb/en/publications/annual-reports/annual-report.html>

Conclusion

21. As the body invested by the international community with the mandate of monitoring the compliance of States with the provisions of the drug control conventions to which they are party, the International Narcotics Control Board reiterates that any and all legislative or policy measures aimed at legalizing and regulating the use of internationally controlled substances for non-medical and non-scientific purposes are incompatible with the legal obligations of State Parties to the 1961 Convention on Narcotic Drugs as well as the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

22. Accordingly, the International Narcotics Control Board renews its call to the Government of Canada to reconsider the adoption of Bill C-45, or any other legislative or policy measures aimed at promoting, legalizing or regulating the non-medical and non-scientific use of internationally controlled substances, in order to ensure continued compliance with Canada's international obligations.

23. In addition, the Board wishes to reiterate its concern that the adoption of Bill C-45 by the Government of Canada may have serious negative ramifications for the integrity of the international legal drug control framework.

24. The ratification of international treaties is a solemn undertaking through which States express their sovereign will to be bound by a series of norms for a greater common purpose, in the case of the drug control conventions, to safeguard "the health and welfare of mankind". In the decades since their adoption, the international drug control conventions have become the bedrock of the international community's efforts to meaningfully address the world drug problem. However, the effectiveness of the international legal framework is to a large extent dependent on its universal acceptance and application. The Board urges the Government of Canada to reconsider any action which may undermine the broad international consensus embodied by the drug control conventions.