
Recommendations for Aligning Canada's International Obligations with the Country's New Legal Framework for Cannabis

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As Canada prepares to enact legislation that will legalize and regulate cannabis, the government should begin to explore Canada's options for ensuring that the country's international legal obligations are brought into alignment with its new legal framework for cannabis. Canada's reform will inevitably involve entering into non-compliance with specific elements of the UN drug control treaties. This should not be regarded as an insurmountable obstacle to Canada's cannabis reform, but nor should it be denied or considered irrelevant. The outmoded treaty obligations that bind States to a counterproductive pursuit of cannabis prohibition are the problem, giving rise to the need for a **temporary, transitional period of what we would call "principled non-compliance,"** accompanied by good-faith efforts to resolve this tension.

A first step would thus be an explicit recognition of the fact that Canada can no longer—and should no longer—fully comply with the drug treaties' obligations regarding cannabis. In addition, unwavering respect for international law can be underscored by openly committing to pursuing the procedures available under the drug treaties, and under international law more broadly, that will ensure Canada's new legal reality regarding cannabis is eventually reflected in the country's international legal commitments.

There is no deadline by which Canada must decide a specific course of action, and every reason for Canada to keep its options open as the pros and cons of the various possible routes forward are carefully weighed; a rush to judgment is unnecessary. Without committing itself prematurely to any particular measure or stance with respect to how it will manage the treaty non-compliance that will arise from the legalization and regulation of cannabis, Canada can make clear to the world that it takes its international obligations seriously, will be studying its options intently in the months ahead, will engage in informal consultations with other countries struggling with the same issue, seek the advice of international experts in the field, and will eventually be sharing the details of its plans.

Strategy and ways forward

There are a number of options that Canada can explore as it moves forward, but there are key issues related to sequencing and timing.

1. **A *step-by-step* approach—deliberate, steady, and multi-track—whereby efforts to resolve treaty questions advance in parallel with Canada’s developing domestic legislative reform.**

There is no rush to initiate formal mechanisms to either reform the treaties or Canada’s relationship with them. Allowing instead for a period of dialogue and reflection during Canada’s transitional phase of implementing new domestic policy is likely to be a beneficial strategy. Canada’s position during this period can be framed in the terms outlined above.

This period, arguably already underway since Canada first announced it would legalize and regulate cannabis, will very usefully continue to allow for the establishment of a responsible, functioning and effective regulatory system (as has been proposed by the Task Force established by the government)—a system that can be shown in due course to deliver on its principles and objectives. This will strengthen Canada’s position over time and disempower potential challenges. Canada will additionally benefit from an implementation approach that is consistent with the wider principles of UN drug control and demonstrates a commitment to evidence-based approaches to protecting and promoting public health while also respecting human rights. Such an approach would include the following:

- Ensuring a **national entity** oversees and monitors cannabis legalization and regulation.
- Having a **robust and comprehensive evaluative structure** (including evidence-led review mechanisms) that is built into the regulation model from the outset, and that formally reports outcomes to the UN drug treaty bodies: the Commission on Narcotic Drugs (CND), the UN Office on Drugs and Crime (UNODC), the World Health Organisation (WHO) and the International Narcotics Control Board (INCB).
- Emphasizing Canada’s commitment to engaging with the mechanisms of the drug treaty regime, and being clearly supportive of those mechanisms. Several immediate actions can be considered:
 - a) express support for the announced special **pre-review meeting on cannabis of the WHO Expert Committee on Drug Dependence (ECDD)** and support the proper functioning of the committee;
 - b) prepare a written and public response to the **INCB’s forthcoming conclusions on Canada** in its country mission report and the next INCB Annual Report (scheduled for release on 3 March 2017); and
 - c) prepare a solid **statement for the upcoming CND session (13-17 March 2017)** explaining the state of affairs, the recommendations of the Task Force, and Canada’s basic, principled position regarding the impending temporary non-compliance, and welcoming continuing dialogue with the INCB and with other Member States. In particular, it would be important for Canada to avoid the legally unsound public denials of this reality as if the conventions have ‘sufficient flexibility’ to allow legalization and regulation.

All three of the above actions would be much appreciated in terms of respect for international law and for the UN system.

- Being particularly vigilant concerning **border issues** and overseas export/trafficking to jurisdictions maintaining a strict policy of cannabis prohibition, following the courtesy principle of *comity* in international law that a state to the greatest extent possible respects the legislation of other states. This would still leave open the option of international trade among countries with a similar legally regulated system.

2. Explore formal treaty reform mechanisms

Having generated space via admission of ‘temporary non-compliance,’ a range of formal mechanisms exist for amendment or modification of the treaties that would theoretically reduce or resolve emerging tensions, and Canada could consider pursuing these options as part of its opening strategy. (We can offer more detailed advice on these options as required.) An initial step in this direction could be for Canada to call for the establishment of an **expert advisory group** to systematically consider the increasing legal tensions, inconsistencies and outdated elements of the treaty system and to outline possible scenarios to resolve them in accordance with international law. Such a proposal is already supported by Colombia, Costa Rica, Jamaica and Uruguay.

Subsequently, amendment proposals could be tabled or a Conference of the Parties convened to discuss amendments (as was done in 1972 when the Protocol amending the 1961 Convention was adopted) or even to start negotiations on a new Single Convention. While the nature of UN decision-making structures mean that such efforts are unlikely to succeed—because of a combination of politics and procedures—engaging in such formal process would nonetheless:

- demonstrate Canada’s commitment to international rule of law and its clear desire to seek resolution of emerging legal tensions;
- ensure that the relevant issues are meaningfully explored in the key multilateral forums for the first time.

In addition, such processes would take some time, thereby allowing for implementation of the domestic reforms to proceed and demonstrate effectiveness (see points above regarding monitoring and evaluation). Given the rapidly evolving international debate and the growing number of reform-minded states, the landscape may change significantly during this process in ways advantageous to Canada.

As noted above, one such procedure has already been put in motion: the WHO Expert Committee has announced a pre-review of cannabis, which will likely result in a critical review and a recommendation to reschedule cannabis under the treaties. While the exact outcome is difficult to predict, it is highly unlikely that this first-ever proper scientific review of cannabis by the WHO-ECDD could result in a recommendation to maintain the status quo of cannabis’ classification. Such an evidence-based recommendation, from the expert body mandated under the treaties to provide such advice to Member States, would be helpful for Canada—hence the recommendation above to welcome and support this review process. Adopting a WHO recommendation to remove cannabis from Schedules I

and IV of the 1961 Single Convention would require a simple majority vote among the 53 CND Member States.

3. Explore other options for changing Canada's relationship with the treaties

If, as would be expected, these initial efforts at treaty reform were unsuccessful—as treaty amendments require near-unanimous approval, negotiating a new treaty would take many years, and even reaching the number of 27 CND Member States required to support removing cannabis from the treaty schedules would at present be politically difficult—Canada could then explore other possibilities, especially:

- withdrawal from the treaties and re-accession with reservations regarding the relevant articles (as Bolivia did with regard to coca leaf); and
- the possibility of *inter se* treaty modification with a group of like-minded states, including traditional producer countries to enable coalition-building across regional blocs.

Both options have pros and cons and will be contested, but both have the advantage of being procedurally difficult to block by countries intent on defending the status quo that disallows the legalization and regulation of cannabis. Both options are in a sense 'opt-out' scenarios for an individual country or a group of countries, but given the current polarization of positions and the obstacles to treaty reform, they are the most realistic and legally defensible options available.

4. Collective action and active engagement in like-minded dialogues

Any attempts by Canada to promote high-level dialogue, explore domestic reform, or achieve reforms of the multilateral framework will be facilitated by collective action of like-minded States working towards a common cause. A number of countries, including Uruguay and Jamaica, as well as a significant number of states within the United States, are already implementing similar reforms, and many others across the Americas, Europe and elsewhere are moving in a similar direction. Informal drug policy dialogues are already taking place on a regular basis, hosted by reform-minded countries and organized in close collaboration with organizations such as the Transnational Institute (TNI), Washington Office on Latin America (WOLA), International Drug Policy Consortium (IDPC) and Germany's international development agency (GIZ), who have a track record of co-hosting dozens of such meetings already in Europe, Latin America, the Caribbean and Southeast Asia over the past decade. Active engagement by Canada in these ongoing informal dialogues is essential and urgent, and Canada could consider hosting a cannabis-specific informal dialogue with a group of like-minded countries. Convening dialogues with key states outside of formal multilateral forums will be a positive way to advance such a mutually beneficial alliance of reform-minded States.

The following organizations prepared this memorandum:

Transform Drug Policy Foundation, Washington Office on Latin America, Global Drug Policy Observatory, Transnational Institute, Canadian HIV/AIDS Legal Network, Canadian Drug Policy Coalition, International Centre on Human Rights and Drug Policy and México Unido Contra la Delincuencia