

Article 28 CONTROL OF CANNABIS

Paragraphs 1 and 2

1. If a Party permits the cultivation of the cannabis plant for the production of cannabis or cannabis resin, it shall apply thereto the system of controls as provided in article 23 respecting the control of the opium poppy.

2. This Convention shall not apply to the cultivation of the cannabis plant exclusively for industrial purposes (fibre and seed) or horticultural purposes.

Commentary

1. The cannabis plant is grown for its fibre, its seeds, for drugs (cannabis and cannabis resin) and for its leaves.¹ The horticultural purposes mentioned in paragraph 2 seem to be of little importance. Paragraph 2 excludes from the scope of the Single Convention, and thus also from the application of its article 23, the cultivation of the cannabis plant exclusively for industrial purposes (fibre and seed) or horticultural purposes.

2. This paragraph, however, only emphasizes what follows in any case from paragraph 1 prescribing the control régime applicable to the cultivation of the plant. Paragraph 1 expressly states that this régime applies only to the cultivation of the cannabis plant for the production of cannabis or cannabis resin. Cultivation of the plant for any other purpose, and not only for the purposes mentioned in paragraph 2, is consequently exempted from the control régime provided for in article 23. This exemption thus appears also to apply to cultivation undertaken only for the leaves, unless the application of article 23 appears to be a measure “necessary to prevent the misuse of, and illicit traffic in, the leaves of the cannabis plant”, pursuant to article 28, paragraph 3.

3. It has been stated that the control of the production of cannabis and cannabis resin offers great difficulties, because many varieties of the cannabis plant, containing different amounts of the psycho-active principle, are spread over many countries.² Wild growth also is important in a number of them.³ Varieties of the plant which contain only very small quantities of the dangerous substance are grown in a considerable number of countries in which—at least at the time of this writing—the cultivators and the native population do not

¹ The leaves are consumed in different ways by smoking or as ingredient of beverages or sweets; the leaves are not “drugs”; see article I, subparas. (b) and (j), and Schedules I and II.

² Document E/CN.7/AC.3/4/Rev.1, para. C.358.

³ Documents E/CN.7/324, para. 46 and E/CN.7/286, p. 10; for a survey of the various aspects of the cannabis problem in a great number of countries as they were seen to exist in the nineteen fifties, see documents E/CN.7/286 and addenda.

appear to be interested in misusing locally produced cannabis drugs or cannabis leaves.⁴ This at least was the situation as it appeared to the participants in the Plenipotentiary Conference.

4. But this does not mean that the cultivation of the plant exclusively for industrial or horticultural purposes is entirely without risk. An official investigation undertaken in the United States of America in 1937⁵ came to the conclusion that only the pith, lower stalks and roots of the plant do not contain the active principle during the growth of the plant. It was also assumed that this ingredient disappeared from the upper stalks after the fruits were mature, and that the seeds either did not contain it at all or contained it only in such minor quantities as to exclude any possibility of misuse. While opium must be collected by incision of the capsules while the poppies are still standing in the field, substances for misuse can be obtained from the cannabis plant after its harvesting and removal from the field. To prevent any abuse, it would be necessary to prohibit removal from the fields of any parts of the cannabis plant except the mature stalks and the seeds, and to burn the remainder; but such a measure would be very difficult to enforce, and would render uneconomical the harvesting for the fibre or seeds.

5. It may be mentioned in this connexion that the Commission considered in the nineteen-fifties two possibilities of solving the problem of abuse of cannabis plants grown for industrial purposes:⁶ breeding a drug-free or drug-poor strain of the cannabis plant for the production of fibre, and replacement of the cannabis plant by other fibre yielding plants.⁷

6. Although the conditions under which the cannabis plant is cultivated for the production of drugs are very different from those under which the opium poppy is grown for opium, the Single Convention provides the same régime for both, namely that of article 23. It will be noted that, unlike the rules applicable to coca leaves,⁸ the crop of cannabis and cannabis resin must be taken over from the cultivators by the national cannabis agency within a maximum period of four months after the end of the harvest.⁹

⁴ Document E/CN.7/324 (1957), paras. 49-56.

⁵ Report of the Marihuana Investigation (Summer 1937) of the United States Bureau of Narcotics, pp. 9 and 12.

⁶ Resolutions 548 F II (XVIII) and 588 C (XX) of the Council; Commission on Narcotic Drugs, report on the ninth session (1954) para. 118; report on the tenth session (1955), paras. 199-206; report on the eleventh session (1956), paras. 282-288; report on the twelfth session, paras. 322-335; *Official Records of the Economic and Social Council, Eighteenth Session, Supplement No. 8* (E/2606); *ibid.*, *Twentieth Session, Supplement No. 8* (E/2768/Rev.1), *ibid.*, *Twenty-Second Session, Supplement No. 8* (E/2891); and *ibid.*, *Twenty-Fourth Session, Supplement No. 10* (E/3010/Rev. 1).

⁷ As regards the breeding see G. Bredemann, F. Schwanitz, and R. von Sengbusch, "Problems of modern hemp breeding with particular reference to the breeding of varieties of hemp containing little or no hashish," in *United Nations Bulletin on Narcotics*, vol. VIII, No. 3 (July-September 1956), pp. 31-34. As regards breeding or replacement, see document E/CN.7/297 (prepared by the secretariat of the Food and Agriculture Organization of the United Nations in consultation with the Secretariat of the United Nations); see also document E/CN.7/324, paras. 49-56.

⁸ Article 27, para. 1 and above comments thereon.

⁹ Article 23, para. 2, subpara. (d). The adequacy of the régime governing the opium poppy for the control of the production of cannabis and cannabis resin might have to be tested in practice.

7. With the temporary exception permitted under article 49, the production of cannabis and cannabis resin must not be undertaken for other than medical and scientific purposes.¹⁰ It is submitted that use in such non-Western medical systems as the Ayurvedic, Unani and Tibbi systems of India and Pakistan may be considered to be a medical purpose.

8. A Party which pursuant to article 49 temporarily permits the cultivation of the cannabis plant for cannabis and cannabis resin must apply the provisions of article 23 to such cultivation, and to the wholesale and foreign trade in, and stocks of, these drugs.

9. The application of the provision of article 23, paragraph 2, subparagraph (e) concerning stocks to manufacturers of extracts and tinctures of cannabis gives rise to a question. Subparagraph (e) exempts from the requirement of an opium stock monopoly of the national opium agency manufacturers of opium alkaloids, medicinal opium or opium preparations. It is submitted that, although the extracts and tinctures of cannabis, being expressly listed in Schedule I, are drugs¹¹ within the meaning of the Single Convention, they are in fact preparations of cannabis, or may at least be assimilated to such preparations for the purpose of implementing subparagraph (e).¹² It may be assumed that the authors of the Single Convention intended to permit manufacturers of the extracts and tinctures to possess stocks of cannabis and cannabis resin for the same reason for which they authorized the possession of opium stocks by manufacturers of opium alkaloids, medicinal opium or opium preparations. Otherwise, the private manufacture of the extracts and tinctures would not be possible in countries producing cannabis or cannabis resin, and their manufacture would become a monopoly of the national cannabis agency.

10. A Party permitting the cultivation of the cannabis plant for cannabis and cannabis resin must, pursuant to article 23, paragraph 2, subparagraph (e) in connexion with article 28, paragraph 1, grant its national cannabis agency the exclusive right of wholesale and foreign trade in these drugs. It need not extend this exclusive right to extracts and tinctures of cannabis. This opinion can be held whether the extracts and tinctures are considered to be drugs different from cannabis or cannabis resin, which indeed they legally are since they are separately listed in Schedule I, or whether they are held to be cannabis preparations.

11. A Party permitting the cultivation of the plant for the drugs, but also permitting cultivation elsewhere exclusively for other purposes, must apply article 23 to the former, but not to the latter. It must in such a case also apply article 23 to the wholesale and international trade in and stocks of cannabis and cannabis resin. It may under such circumstances exempt from the régime of article 23 not only cultivation undertaken for industrial or horticultural purposes, but also cultivation for the leaves;¹³ but a failure

¹⁰ Article 4, para. (c).

¹¹ Article 1, para. 1, subpara. (j); they are not "alkaloids".

¹² See article 4, para. (f) of the 1925 Convention using the term "galenical preparations".

¹³ See above as regards the application of article 23 to cultivation for the leaves as a "necessary" measure pursuant to article 28, para. 3, see also below comments on this paragraph.

to apply article 23 to cultivation for industrial or horticultural purposes, and particularly to cultivation for the leaves, might give rise to very difficult enforcement problems in regard to cannabis and cannabis resin. Cannabis and cannabis resin are listed in Schedule IV, and therefore also subject to the provisions which govern drugs in that Schedule ¹⁴ in all countries, whether they permit their production or not.

12. It will be noted that the Single Convention does not contain provisions on the production of cannabis and cannabis resin corresponding to those of article 24 concerning the limitation on production of opium for international trade.

13. As regards the application of article 22 to the cultivation of the cannabis plant, see above, comments on that article. See also above, comments on article 23.

14. The multilateral narcotics treaties preceding the Single Convention do not contain any provision expressly relating to the cultivation of the cannabis plant; see, however, article 11, paragraph 2 of the 1925 Convention.

¹⁴ Article 2, para. 5.

Paragraph 3

3. The Parties shall adopt such measures as may be necessary to prevent the misuse of, and illicit traffic in, the leaves of the cannabis plant.

Commentary

1. The leaves of the cannabis plant, when not accompanied by the tops of the plant, are not “cannabis”,¹ and being listed neither in Schedule I nor in Schedule II are not “drugs” in the sense of the Single Convention.² In referring to the “illicit traffic in the leaves”, this paragraph does not use the expression “illicit traffic” in the meaning defined in article 1, paragraph 1, subparagraph (i).³ The illicit traffic which under paragraph 3 the Parties must take measures to prevent, is trade in the leaves contrary to domestic legal provisions intended to combat their misuse, or to foreign laws governing such trade. Only paragraph 3 applies to the traffic in leaves and not the other provisions of the Single Convention concerning the illicit traffic (articles 35 to 37). Parties need not furnish to the Secretary-General and to the Board information on seizures of leaves of the cannabis plant, as they are required to do for drugs by article 18, paragraph 1, subparagraph (c) and article 20, paragraph 1, subparagraph (e). Parties may, however, be required to adopt in respect to the leaves measures such as those stated in articles 35 to 37 if these are necessary to prevent the misuse of, and illicit traffic in, the leaves.

2. As regards a possible obligation to apply to the cultivation of the cannabis plant measures such as those provided in article 23 if necessary

¹ Article 1, para. 1, subpara. (b).

² Article 1, para. 1, subpara. (j).

³ See above, comments on that provision.

to prevent the illicit traffic in or misuse of the leaves, see above, comments on article 28, paragraphs 1 and 2.

3. It has also been suggested that it would theoretically be possible, although except in extreme cases not very probable, that a Party would be bound under article 28, paragraph 3 to prohibit the cultivation of the cannabis plant for any purpose if this measure is necessary to prevent the misuse of, and illicit traffic in, the leaves of the plant.⁴

4. Parties are not bound to prohibit the consumption of the leaves for non-medical purposes, but only to take the necessary measures to prevent their misuse. This might involve an obligation to prevent the consumption of very potent leaves, or of excessive quantities of them. It may be assumed that Parties would in any case not be permitted by paragraph 3 to authorize the uncontrolled use of the leaves. Any authorized consumption would have to be governed by such regulations as would be required to prevent illicit traffic and misuse. The conditions under which non-medical consumption might be permitted might also depend on the outcome of the studies which at the time of this writing are being carried out concerning the effects of the use of the leaves.

⁴ See above, comments on article 22.