

## Executive summary

The title of this study translates as: *International law and cannabis. An assessment of municipal and foreign views in favour of regulating cannabis cultivation for recreational use based on UN Narcotic Drugs Conventions and the EU legal instruments in anti-drugs policy.*

How the authorities should deal with the cultivation of cannabis for the supply of coffee shops is a difficult but relevant question from a legal, social and political perspective. The same holds good for new phenomena that are currently developing such as joint cultivation and consumption in so-called Cannabis Social Clubs. Against this background, the central question of this research is whether legalization, decriminalization, policy-based tolerance and/or other forms of regulating cannabis cultivation for recreational use is permissible under international law. The assessment expressly focuses on the question to what extent arguments and plans of Dutch municipalities and initiatives in foreign jurisdictions to regulate cannabis cultivation for recreational use, relate to prevailing international law. More particularly, this concerns the UN 1961 Single Convention on Narcotic Drugs as amended by the 1972 Protocol, the UN 1988 Illicit Traffic Convention, the so-called EU Schengenacquis, the EU 1996 Joint Action Illicit Drug Trafficking and the EU 2004 Framework Decision Illicit Drug Trafficking. In order to provide a substantiated answer to the research question, this study offers an extensive and detailed account and analysis of these international legal instruments. The findings and views of the international bodies designated to supervise such instruments, will also be considered. Within the ensuing framework under international law, the municipal arguments and plans, and initiatives in other jurisdictions are scrutinized from a purely legal perspective. To this end, these arguments, plans and initiatives are first inventoried and categorized.

The UN Narcotic Drugs Conventions are of primary importance to the international legal framework. The UN drug control system aims at limiting the use of narcotics such as cannabis to purely medical and scientific purposes. In view of the Preamble, the body of text, the system and the history of deliberations of the UN Drugs Conventions, eradicating cannabis for recreational use is the 'object and purpose' of these conventions. This eradication target is based on the assumption that realisation thereof most effectively serves the interests of public health and crime control in particular. For this research, it is of importance that next to coca and poppy products, cannabis products are the main object of these conventions. Allowing cannabis cultivation for recreational use by legalisation, decriminalisation, policy-based tolerance and/or other forms of regulation would contravene the aim to eradicate

cannabis products for other than medical and scientific purposes. This applies to both cannabis cultivation for the supply of coffee shops and cultivation within the framework of a Cannabis Social Club. We find the same irreconcilability with respect to European law. The EU drugs instruments aim at cracking down on illicit drug trade and they confirm and build on the existing obligations for the member states ensuing from the UN Drugs Conventions.

In order to achieve the stated eradication target, the UN Drugs Conventions provide for a prohibitive, repressive and multilayer enforcement system, which imposes a wide spectrum of diverse criminal, administrative and other obligations on the parties to the convention. These include obligations to cooperate in an estimate system (which serves to ensure the availability of sufficient amount of narcotic drugs only for medical and scientific purposes), general obligations to combat cannabis cultivation for recreational purposes e.g., the obligation to realize a total ban on cannabis cultivation for recreational use among others through criminalization, obligations to prosecute for cannabis cultivation that is not small-scale and not intended for personal use, a total ban on the possession of cannabis intended for personal recreational use, obligations to also seize cannabis intended for recreational use, and the obligation to implement and participate in a system of international cooperation in criminal matters. Implementation of all these obligations should result in a zero circulation of narcotics – including cannabis – for recreational use. The obligations pertaining to European law are in line with this. These include obligations to criminalize cannabis cultivation for recreational use by third parties and to take the most appropriate measures against that cultivation in order to combat it.

In light of these obligations, legalization or decriminalization of the cultivation of cannabis is no option under these international instruments. In view of the various prosecution obligations ensuing from the UN Drugs Conventions and European law with respect to, in principle, serious criminal offences, it is hard to defend that criminal policy-based non-prosecution (penal tolerance) of cannabis cultivation for the supply of coffee shops is legally permissible on the basis of the expediency principle. The reservation formulated by the Netherlands concerning Article 3 sub 6 of the Illicit Traffic Convention – and therefore not with reference to the Single Convention as well as other obligations ensuing from the Illicit Traffic Convention and the European law framework – does not offer the Netherlands sufficient room for policy-based or any other form of tolerance of cannabis cultivation for recreational use by third parties. This conclusion is based on the content and background of the reservation, international public law according to which reservations are fixed with respect to the law applicable at the time that they are formulated, the ‘object and purpose’ of the Illicit Traffic Convention, and the view of the International Narcotics Control Board (INCB) that general policy-based penal tolerance of cannabis cultivation for recreational consumption –

not designated for personal use – is contrary to the drugs conventions. Moreover, the criminal law expediency principle does not affect the obligations of criminalization or the non-criminal obligations for states ensuing from the UN Drugs Conventions. Furthermore, it seems reasonable to assume that – in view of the considerations of the European Court of Justice e.g. – the EU Framework Decision in principle also demands prosecution of the large-scale cultivation or cultivation aimed at illicit trade of cannabis for recreational use. The obligations to prosecute for joint cultivation and consumption in Cannabis Social Clubs, however, is less clear-cut. Although such cultivation cannot be equated with cultivation for private personal use, the connection is such that states are at liberty to refrain from prosecution based on expediency considerations. However, this does not discharge those states from applying the other, mostly non-criminal obligations to combat the cultivation and possession of cannabis.

From a legal perspective, there is no room for a positive answer to the question whether cannabis cultivation intended for recreational use may be placed under the general exception of ‘medical and scientific purposes’ under the UN Drugs Conventions. The scope of the exception is far too limited. The exception, therefore, does not comprise public health in a broad sense so that arguments that legalization, decriminalization or regulating of the cannabis market for recreational use meet public health interests, fail against the UN Drugs Conventions and European law built on these conventions. The fact that this demonstrates the conventions’ limited, unilateral and rigid approach to public health interests, does not negate this conclusion. For that matter, the INCB also opposes stretching the exception of medical purposes in order to enable access to cannabis for recreational use.

The assessment of the municipal arguments and foreign jurisdictions’ initiatives for regulating cannabis cultivation for recreational use consists of three parts. The first part presents an account and evaluation of the legal arguments. Next, in the same manner, factual, social and/or political arguments are discussed. The third part concerns an discussion and evaluation of the various regulating modalities proposed by Dutch municipalities and of modalities applied in other jurisdictions. The legal arguments mainly aim at amending the conventions, amending the lists of the Single Convention, leaving the convention and consequently re-acceding with formulation of a reservation, allowing for the application of the exception ‘medical and scientific’ use based on public health interests, and the application of the expediency principle relative to criminal prosecution policy. The conclusion is that permitting cannabis cultivation for the supply of coffee shops cannot be implemented on the grounds of the legal arguments provided by Dutch municipalities with due observance of the UN Drugs Conventions and the EU legal instruments. The factual, social and/or political arguments advance public health and crime control as the most important interests that regulated cannabis cultivation should serve. A lot of these arguments reflect the problems that municipi-

palities face relative to the cultivation, distribution, trade, sale, purchase and use of cannabis. Nevertheless, the arguments with regard to public health, crime control and other social interests, cannot constitute a legitimacy under international law for permitting cannabis cultivation for recreational use and for the supply of coffee shops or other distribution points. The various regulating modalities in the final part of the evaluation include regulated legalization (Uruguay and the US federal states Colorado and Washington), joint cultivation in Cannabis Social Clubs (Belgium, Spain and Uruguay), cannabis cultivation by non-profit growers, cannabis cultivation by licensed commercial parties, and cannabis cultivation for recreational use under the veil of medical or scientific programmes. The conclusion with respect to all these modalities is that the fight-against-drugs framework under international law leaves no room for legalization, decriminalization policy-based tolerance and/or any other regulating approaches. Only with respect to Cannabis Social Clubs, however, would a state less easily be in conflict with the obligations pursuant the UN Drugs Conventions and European law whenever that state would in fact just leave those Clubs untouched (thus without applying regulating measures or any explicit policy thereto).

The final conclusion is that legalization, decriminalization, policy-based tolerance and/or other forms of regulating cannabis cultivation for the recreational user market is not permissible under the UN Narcotic Drugs Conventions or European law. This also implies that in view of the international obligations concerning the fight against drugs, there is no room for regulating cannabis cultivation for the supply of coffee shops, in relation to Cannabis Social Clubs or through other modalities that serve recreational use by third parties.