Keywords: cannabis – decriminalisation – drug policy – Europe – legislation – international law – UN convention

Setting the context
The history of cannabis has been the subject of numerous books in recent years (see Fankhauser, this monograph). One of the many historical perspectives that have been explored is cannabis's social, political and legislative history. This chapter provides a brief history of controls on cannabis, and analyses a series of recent government enquiries that have informed legislative reform, particularly in Europe.

Opinions are divided in this area. Liberalisers and cannabis advocacy groups — the key Internet publishers of information on the issue — continue to claim cannabis is a recently controlled substance and ‘natural product’, and have espoused a number of theories to explain its prohibition (‘). Yet the historical picture is more complex. Use of cannabis as a psychoactive drug has stirred controversy for centuries. And finding the most appropriate control system has interested professionals, politicians and governments from the beginning.

Today, international drugs conventions recommend signatories to designate, under national legislation, the most stringent control over cannabis. However, some countries have used the granted discretion to move away from such recommendations. A cross-reading of governmental enquiries shows that, while cannabis is considered a potentially dangerous substance, its dangers, in comparison with other controlled substances, may have been overstated and alternative forms of sanctions, such as civil sanctions, fines or compulsory health assessments, have been recommended in place of criminal penalties.

European countries' laws or prosecution policies seem to be broadly in accord with these government enquiries. Nonetheless, more liberal positions have attracted some concerns, expressed in particular at UN level, on the grounds that leniency on cannabis can endanger the overall international effort against drugs. Accordingly, the latest developments in some countries seem to tip the balance back towards a new attention on restrictive measures.

Further reading
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Inglis, B. (1975), The forbidden game: a social history of drugs, Hodder and Stoughton, London.

See also the list of governmental reviews (Table 1) in this chapter and the grey literature list in the Appendix to Volume 1 of this monograph (p.300).

Cannabis control in Europe

Danilo Ballotta, Henri Bergeron and Brendan Hughes

Introduction
The use of cannabis as a psychoactive substance has always been a subject of controversy. International drugs conventions recommend signatories to designate, under national legislation, the most stringent control over cannabis, but some countries have used the granted discretion to move away from such recommendations. Indeed, finding the most appropriate control system has interested professionals, politicians and governments since the beginning. A cross-reading of governmental enquiries shows that, while cannabis is considered a potentially dangerous substance, its dangers in comparison with other controlled substances might have been overstated, and alternative forms of sanctions, such as civil sanctions, fines or compulsory health assessments, have been recommended in place of criminal penalties. European countries' laws or prosecution policies seem to be broadly in accord with such enquiries, but these positions have attracted some concerns, expressed in particular at UN level, on the grounds that such a 'lenient approach to cannabis' can endanger the overall international effort against drugs. Accordingly, the latest developments in some countries seem to tip the balance towards a new attention on cannabis through restrictive measures.

Cannabis: a substance under continuous control

Origins of control

Cannabis has been used for a variety of purposes for thousands of years. Yet in Europe, consumption remained mostly limited to experimentation by small elites or to those having contact with specific countries, in particular North Africa and India (Booth, 2003). There is significant evidence to suggest that cannabis has always been a controversial or troubled substance, and was placed under some sort of restriction almost as soon as its psychoactive effects were discovered. In 2000 BC in India, religious authorities used cannabis in holy rituals and it is likely that only priests had access to it (Booth, 2003). In the Muslim world in medieval times there existed an ambivalent attitude towards the use of cannabis (Hamarneh, 1957). Hashish, furthermore, had derogatory associations with Sufism and as a precipitator of madness (Booth, 2003). Key critics of cannabis include the theologian Ibn Taymiyyah, the judge Ibn Ganim and historian Al Magrii. Much-cited examples of controls include the prohibition in 1265 of cannabis in Damascus by King al-Zahir Baybars (Hamarneh, 1957), and the destruction of cannabis plants and prohibition of cannabis use in 1378 by the Ottoman emir of Egypt, Soudoun Sheikouni (Rosenthal, 1971; Caballero and Bisiou, 2000; Arana and Marquez, 2006). In Europe in 1484 Pope Innocent VIII associated the use of hashish with witchcraft in the bull Summis Desiderantes (Booth, 2003). Such examples, though anecdotal, illustrate that controversy surrounding cannabis use is not a new phenomenon.

Some precursors of controls relating to cannabis can be found in Europe's colonial period,
though outside the continent itself. Following Napoleon’s invasion of Egypt in 1798, in 1800 he prohibited his soldiers to smoke or drink the extracts of the plant, imposing a penalty of imprisonment of three months, thus implementing perhaps the first 'penal law' on cannabis. A law in South Africa in the 1870s, that was tightened in 1887, prohibited the use and possession of dagga (cannabis) by Indian immigrants, largely in response to a perception that its use by them was dangerous for white rule (Booth, 2003). In India, prohibition of cannabis was mooted in 1838, 1871, 1877 and, most famously, rejected following an extensive 3000-page report by the Indian Hemp Drugs Commission in 1894. Nonetheless, despite rejections of a blanket ban, various Indian cities and states issued quotas, tax regimes or restrictions on cannabis (Booth, 2003).

While familiarity with cannabis products in the pharmaceutical sphere was widespread in the early 20th century (Lewin, 1924; Fankhauser, this monograph), within Western Europe there is little evidence of significant cannabis prevalence and criminal prosecutions until after the Second World War. Cannabis control is best viewed in the context of national and international initiatives in the area of drug control during the late 19th and early 20th centuries — in particular, relating to opiates, together with increased supervision of pharmaceutical products in general. Controls in Europe focused on regulating pharmaceutical use of cannabis. For example, in Germany, the first legal act on cannabis was in a Pharmacy Ordinance of 1872 when the sale of Indian hemp was limited to pharmacies (this ordinance was still valid in 1920) (see Fankhauser, this monograph).

However, in Greece and near-neighbour countries such as Turkey and Egypt, cannabis prevalence was higher and attracted strong legal responses. Hashish possession was made a capital offence in Egypt in 1868, with a tax on cannabis imposed in 1874, although exemptions for non-Egyptians and enforcement issues led to them being ineffectual (Booth, 2003). In Turkey a nationwide campaign to confiscate and destroy cannabis was begun by the Sultan in 1877, and an import ban imposed in 1879; in 1884 cultivation of cannabis became a criminal offence (Abel, 1980). In Greece cultivation, importation, and usage of cannabis was banned in 1890, based on concern for hashish use among the poor. Nonetheless, Greece was a significant exporter of hashish to Turkey and Egypt into the 1920s (Abel, 1980).

Prior to the First World War, international agreements on narcotic substances increased the mechanisms of control on opium and related substances. For opiates, the Opium Commission in Shanghai in 1909 contributed to a framework agreement on opium control at the First International Opium Conference in the Hague in 1911-1912. While the Hague conference concentrated on opium, at this conference Italy lobbied for an international ban on cannabis, largely based on hashishism in its protectorates Tripolitania and Cyrenaica (obtained from Turkey during a war in 1911). In the USA, a number of states also prohibited non-medical use of cannabis: California (1915), Texas (1919) and Louisiana (1924). A parallel development was
legal restriction on alcohol use: a ban in Finland (1919) and the USA (1920), and a rationing system in Sweden (from 1914). In Switzerland cannabis was outlawed in 1924.

The key driver of international cannabis prohibition in the early 20th century was an amendment to the International Opium Convention (1925), which was extended beyond opiates to embrace cannabis. The convention prohibited the export of cannabis resin to countries that prohibited its use (Bayer and Ghodse, 1999). The process behind the inclusion of cannabis in the convention has been both heavily discussed (e.g. Lowes, 1966) and roundly criticised (e.g. Kendell, 2003; Holzer, 2004). There is consensus that the cannabis subcommittee advising the Second League of Nations Opium Conference succumbed to strong Egyptian demands for a ban on cannabis and that delegates were certainly given little time to conduct due diligence on materials (Booth, 2003; Kendell, 2003; Holzer, 2004).

Following the approval of the 1925 International Opium Convention, European countries gradually outlawed cannabis use and possession (e.g. the UK's Dangerous Drugs Act, 1928; Germany's second Opium Law, 1929). Nonetheless, the first substantial wave of convictions for cannabis offences did not occur until the 1960s. Official crime reports in the 1960s and 1970s did not differentiate cannabis convictions from those for other illicit drugs, yet studies suggest that there were very few cases other than cannabis. Bollinger suggests that the bulk of the less than thousand 'narcotics cases' (police registrations) before 1960 in Germany related to the 'stem of old morphinists' (Bollinger et al., 2002). In Canada the first known seizure of marijuana did not occur until 1932, but widespread enforcement is reported much later, with a total of 261 convictions for drug offences in 1960 (the majority, however, for heroin offences). In the Netherlands, in the first half of the 20th century, no problems or social controversy are reported on cannabis, but the opium law was revised in 1953 to include cannabis and comply with international treaties. Thus, some authors (e.g. Fischer et al., 1998) have argued that prohibition was introduced mainly in response to international obligations — in a broader diplomatic context — than to answer to an urgent problem at national level between law and enforcement (or necessity of it), as 'the solution without the problem' (2).

**International law**

The United Nations Single Convention on Narcotic Drugs (1961) elevated the control on narcotic substances and on cannabis to a global level. Under the system introduced in 1961 (mainly imported from previous treaties), cannabis is to be considered as one of the most dangerous existing drugs (3).
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This section discusses the texts of the UN Convention. While this approach may appear legalistic to the non-specialist reader, a thorough understanding of the legal status of cannabis under international law is vital for understanding the 'room for manoeuvre' given to different countries on the issue.

Cannabis, cannabis resin and extracts and tincture of cannabis are listed in Schedule I of the 1961 Convention among substances whose properties might give rise to dependence and which present a serious risk of abuse, which are subject to all control measures envisaged by the Convention (5). Cannabis and cannabis resin are again listed in Schedule IV of the 1961 Convention, which comprises 15 substances already listed in Schedule I that are considered particularly dangerous by virtue of their harmful characteristics, risks of abuse and extremely limited therapeutic value. Among these 15 substances, we find heroin and cannabis but not cocaine, which is (only) listed in Schedule I.

As specified by the 2001 INCB Annual Report, 'to be included in Schedule IV, a drug has to be considered particularly liable to abuse and to produce ill effects, and such liability should not be offset by substantial therapeutic advantages'. In the view of the delegations present at the Plenipotentiary Conference that prepared the 1961 Convention, cannabis certainly presented such characteristics (though cocaine, for example, did not). THC, the main psychoactive ingredient of cannabis, is also listed by the 1971 Convention on Psychotropic Substances, in the first of four schedules, its use being prohibited except for scientific and very limited medical purposes (Article 7a) (6).

This composite classification reflects the concern about the abuse of cannabis and the desire of the convention promoters to advise countries to design, under national legislation, the most stringent control on cannabis (7). Indeed, this double classification (Schedule I plus Schedule IV, 1961 Convention) allows signatory countries to adopt any special measures of control regarded as necessary, including prohibition of use, due to the 'particularly dangerous properties' of the drugs listed in Schedule IV. However, a country shall adopt any special measures of control if considered necessary having regarded the particularly dangerous properties of drugs in Schedule IV (8). The non-obligation of this norm, in fact a condition for its implementation, is confirmed by the UN Commentary on the 1961 Convention, which restates that a party is 'obliged to apply special measures only if it believes them to be necessary' (9).

It seems, therefore, that the 1961 Convention suggests to apply the most stringent control system to cannabis, yet leaves countries some flexibility in their interpretation of the necessity of such control. According to this classification, use and possession of cannabis should not be allowed except for authorised medical or scientific purposes (Articles 4c, 33, 36, 1 961 Convention). Countries are requested to prevent its misuse (Article 28, 1 961 Convention) and take all practicable measures for the prevention of its abuse (article 38, 1961 Convention). They
should also not permit its possession (Article 33, 1961 Convention) and if they decide to do so, they are entitled to make possession of cannabis a punishable offence (Article 36, 1961 Convention), and are mandated to make possession for the purpose of trafficking an offence of criminal nature (Article 3, paragraph 1(a)(iii), 1988 Convention). Possession for personal consumption may also be criminalised (Article 3 paragraph 2, 1988 Convention).

This system of provisions leaves no doubt about the severity requested towards cannabis and it is evident that signatory countries cannot allow non-medical use of cannabis, such as in a hypothetical legalisation regime, without renouncing the UN Conventions. They must set measures to discourage, prevent or — if considered necessary — prohibit and punish personal use of cannabis (11).

All this is, however, largely based on the acceptance of the Conventions by the signatory countries. This means that countries must judge the opportunity and necessity of applying the convention norms. Conventions are, in fact, not self-executing and in the transposition of the international dictate into national law, countries are allowed discretion, while applying the principle of good faith in interpreting international agreements. This is visible throughout in the presence of safeguard clauses in the text of the Conventions: subject to constitutional limitations (Article 36.11 1 961 Convention); subject to basic concepts of national legal systems (Article 3, paragraph 2, 1988 Convention); the Parties shall as far as possible (Article 261 paragraph 2, 1 961 Convention); these measures are necessary or desirable (Article 22 and Article 301 paragraphs 2 and 4, 1961 Convention). Nevertheless, states should interpret treaties in good faith and in the light of their object and purpose, according to Article 31 of the 1969 Vienna Convention on the Law of Treaties.

A constant quest for evidence

By 1970, 64 states had ratified the Single Convention on Narcotic Drugs and with it the control system required for cannabis. Nevertheless, the fact that cannabis was treated no differently, even more strictly, than other substances that were perceived to be more dangerous provoked uncertainty within governments and parliaments.

There is evidence to suggest that disagreements embraced the question of the international classification(s) of cannabis from its beginning. Already, during the Plenipotentiary Conference, which drafted the 1961 Convention, controversies arose around the question of whether the prohibition of drugs in Schedule IV should be mandatory or only recommended. More recently, some authors see the insistence of certain countries to place cannabis under the strictest control regime in the convention as the main reason for such classification (Canadian Senate
Report on Cannabis, 2002). Others go so far as to use the words ‘arbitrariness’ when addressing cannabis classification (Caballero and Bisiou, 2000).

Evidently, the question of the classification of cannabis or of its derivatives is controversial and has arisen from time to time (11). In 2003 the WHO Expert Committee on Drug Dependence (9, following a Critical Review (13), recommended the rescheduling of dronabinol (THC, the main active principle of cannabis), to Schedule IV of the 1971 Convention (14). This would mean that the active principle of cannabis would be moved from a schedule where substances have very limited, if any, therapeutic usefulness and their abuse constitutes an especially serious risk to public health, to a schedule where substances have some therapeutic usefulness with a smaller (but still significant) risk to public health due to their liability of abuse. If implemented, this would probably have important consequences on the overall classification of cannabis and on its control requirements worldwide, but no further procedural steps have been taken.

In response to the WHO, the INCB expressed its concern in its 2003 report about this possible rescheduling of THC. In March 2006 the WHO Expert Committee on Drug Dependence concluded that dronabinol (THC) constitutes a substantial risk to public health, but the risk is different from that of cannabis, and it has moderate therapeutic usefulness. As a result, it recommended that dronabinol and its stereoisomers should be rescheduled from Schedule II to Schedule III of the 1971 Convention (WHO, 2006). At the 50th UN Commission on Narcotic Drugs in March 2007, members agreed to postpone any decision on dronabinol until more conclusive evidence is available, although firm opposition to the rescheduling was expressed by some delegates.

At the level of national authorities, evaluations of cannabis have been carried out on a regular cycle. The first 'official' enquiries date back to the late 19th and early 20th centuries, for example the Indian Hemp Drugs Commission in 1894, the Panama Canal Zone Report in 1925 and the La Guardia Report in 1944. The frequency of publication of such enquiries, however, picked up from 1969 onwards and has led to a proliferation of 'official' enquiries in the 1990s and 2000s. Despite their differences in scope, methods and conclusions, the recommendations of these, and older enquiries, reveal interesting common patterns. Three have been isolated for simplicity: (1) cannabis is not a harmless substance; (2) its dangers, in comparison with other controlled substances, have been overstated; and (3) civil sanctions, fines, or compulsory health assessments should be established in place of criminal penalties for personal use offences (Table 1).

Conclusion of reviews 1: cannabis is not a harmless substance
Cannabis is a substance that poses some kind of threats to health for which certain control would be justified. The UK Wootton Report in 1968 affirms that the 'adverse effects that cannabis consumption, even in small amounts, may produce in some people, should not be dismissed as insignificant' (15). These words were echoed more than 30 years later by the UK Report of the Advisory Committee on Drug Dependence, which stated in 2002 that its use 'unquestionably poses risks both to individual health and to society' (UK Home Office, 2002). This view is also mirrored by other enquiries. For example, the inquiry for the Prime Minister of Jamaica in 2001, affirming that 'it is accepted that cannabis is not entirely safe, even where it is still used for traditional religious rituals, such as in Jamaica', and that 'despite its proven folk medicinal qualities, its use can be injurious to health' (National Commission on Ganja, 2001). The general attitude is that cannabis and its derivatives should be maintained as controlled drugs (UK House of Lords, 1998), as governments are responsible for restricting the availability of harmful substances, in particular to prevent the exposure of young people (Canada, 1970; Australia, 1994; New Zealand, 1998).
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<thead>
<tr>
<th>Title of report</th>
<th>Country</th>
<th>Year</th>
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<tr>
<td>Cannabis: Report by the Advisory Committee on Drugs Dependence (&quot;The Wootton Report&quot;)</td>
<td>United Kingdom</td>
<td>1969</td>
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<td>Le Dain Report</td>
<td>Canada</td>
<td>1970</td>
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<td>Baan and Hulsman Commissions</td>
<td>The Netherlands</td>
<td>1970</td>
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<td>Legislative options for cannabis use in Australia, Monograph No. 26</td>
<td>Australia</td>
<td>1994</td>
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<td>A Report of the National Commission on Ganja to Rt Hon. P. J. Patterson, QC, MP, Prime Minister of Jamaica</td>
<td>Jamaica</td>
<td>2001</td>
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<td>The Senate Special Committee on Illegal Drugs, Cannabis: our position for a Canadian public policy</td>
<td>Canada</td>
<td>2002</td>
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<td>Report by the Advisory Committee on Drug Dependence, Home Office, The Classification of Cannabis under the Misuse of Drugs Act 1971</td>
<td>United Kingdom</td>
<td>2002</td>
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<tr>
<td>Rapport de la Commission d’enquête du Sénat français sur la politique nationale de lutte contre les drogues illicites, No. 321</td>
<td>France</td>
<td>2003</td>
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<tr>
<td>Report by the Advisory Council on the Misuse of Drugs, Home Office, Further consideration of the classification of cannabis under the Misuse of Drugs Act 1971</td>
<td>United Kingdom</td>
<td>2005</td>
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Table 1: Summary of governmental reviews on cannabis control