

INTERNATIONAL LAW AND CANNABIS

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AND CANNABIS

Regulation of Cannabis Cultivation for
Recreational Use under the UN Narcotic
Drugs Conventions and the EU Legal
Instruments in Anti-Drugs Policy

Volume I

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International Law and Cannabis. Regulation of Cannabis Cultivation for
Recreational Use under the UN Narcotic Drugs Conventions and the EU Legal
Instruments in Anti-Drugs Policy

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PREFACE

What legal avenues are there to regulate cannabis cultivation and trade for recreational use? This question has generated heated discussions in various societies, in political and academic discourses. Several states are considering or have adjusted their legal and policy approaches towards a more lenient regulation of cannabis cultivation and trade for the recreational user market. These discussions have been the overture for two academic studies that we have conducted recently.

The first study focused on the question to what extent are domestic initiatives involving regulation of cannabis cultivation for recreational use compatible with the relevant UN narcotic drugs conventions and European Union law. It was this question that took centre stage in the political discussion in the Netherlands at that time. The results of this study were presented to the Minister of Justice and Security in the Netherlands in 2014.¹ Because of the limitation of this first study to the framework of UN and EU law regulating drugs only, we decided to complement our research by involving international law more broadly and by looking more specifically at the positive human rights obligations.

The second study covered two questions. First, to what extent can regulation of cannabis for recreational use, for the sake of health, safety and crime control, be considered a positive human rights obligation resulting from the right to health, the right to life, the right to physical and psychological integrity and the right to privacy. In the event this obligation can be established, the second question concerned the hierarchical relationship between these positive human rights obligations and the obligations arising from the UN drugs conventions and EU anti-drugs laws. This second study was presented to politicians in the Netherlands in 2016.² Since that time, the developments in the Netherlands have progressed to the extent that the government has decided to set up an experiment for legal supply of cannabis to point-of-sale for recreational use. The legislation concerning this experiment is being prepared as we speak.

¹ Piet Hein P.H.M.C. van Kempen & Masha I. Fedorova, *Internationaal recht en cannabis. Een beoordeling op basis van VN-drugsverdragen en EU-regelgeving van gemeentelijke en buitenlandse opvattingen pro regulering van cannabisteelt voor recreatief gebruik*, Deventer: Wolters Kluwer, 2014.

² Piet Hein P.H.M.C. van Kempen & Masha I. Fedorova, *Internationaal recht en cannabis II. Regulering van cannabisteelt en -handel voor recreatief gebruik: positieve mensenrechtenverplichtingen versus VN-drugsverdragen*, Deventer: Wolters Kluwer, 2016.

Due to the topical nature of the issue and the ongoing discussions on national and international levels, we decided to make our both studies available to a broader academic forum to which end these books have been translated and updated:

- Piet Hein P.H.M.C. van Kempen & Masha I. Fedorova, *International Law and Cannabis I. Regulation of Cannabis Cultivation for Recreational Use under the UN Narcotic Drugs Conventions and the EU Legal Instruments in Anti-Drugs Policy*, Cambridge: Intersentia, 2019.
- Piet Hein P.H.M.C. van Kempen & Masha I. Fedorova, *International Law and Cannabis II. Regulation of Cannabis Cultivation and Trade for Recreational Use: Positive Human Rights Obligations versus UN Narcotic Drugs Conventions*, Cambridge: Intersentia, 2019.

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All errors are our own. The sources have been updated and all the websites were accessible on 1 January 2019.

Piet Hein van Kempen and Masha Fedorova

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LIST OF ABBREVIATIONS

| | |
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| CESCR | Committee on Economic, Social and Cultural Rights |
| CJEU | Court of Justice of the European Union |
| CND | Commission on Narcotic Drugs |
| CSC | Cannabis Social Clubs |
| ECommHR | European Commission of Human Rights |
| ECOSOC | Economic and Social Council |
| ESC | European Social Charter |
| ECSR | European Committee of Social Rights |
| ECtHR | European Court of Human Rights |
| EU | European Union |
| ECHR | European Convention on Human Rights |
| GA | General Assembly |
| GC | Grand Chamber |
| I-ACionHR | Inter-American Commission on Human Rights |
| I-ACtHR | Inter-American Court of Human Rights |
| ICJ | International Court of Justice |
| ICTY | International Criminal Tribunal for the former Yugoslavia |
| ILC | International Law Commission |
| INCB | International Narcotics Control Board |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| HRC | Human Rights Committee |
| OJ | Official Journal (of EU) |
| CoE | Council of Europa |
| SC | Security Council |
| Trb. | Tractatenblad |
| UN | United Nations |
| UNODC | United Nations Office on Drugs and Crime |
| UDHR | Universal Declaration of Human Rights |
| UN | United Nations |
| WHO | World Health Organization |
| WTO | World Trade Organization |

