

Responses to Questions from Senator Gillibrand's Office

1. According to the State Department's interpretation of the Single Convention on Narcotic Drugs, if a signatory's government licenses private businesses or other non-governmental institutions to cultivate cannabis for medical research, is that country in violation of the Single Convention?

If a party to the Single Convention issued multiple licenses for the cultivation of cannabis for medical and scientific purposes, that fact alone would not be a sufficient basis to conclude that the party was acting in contravention of the Convention.

The Single Convention elaborates a process to control access to substances with narcotic properties and characteristics through a system of three graduated schedules, with Schedule I including the most restrictive controls, and Schedule III the least. A separate listing under "Schedule IV" is available for substances deemed to have no medical utility. Substances listed in schedule IV are not subject to additional controls other than those listed in schedule I. Note that while the U.S. has a similar system of controls, there are five schedules, with "Schedule I" equating to Schedule IV under the Single Convention.

In addition to the controls applicable to a substance listed in schedule I, cannabis is subject to the controls set forth in Article 28 of the Single Convention, "Control of Cannabis." The Single Convention narrowly defines cannabis as the "cannabis plant" exclusive of leaves or seeds if separated from the plant. Controls applicable to "cannabis" do not apply to cannabis plants used exclusively for industrial purposes (fiber and seeds) or for horticultural purposes, nor do they apply to seeds or leaves separated from the plant. Article 28 refers to article 23, "National Opium Agencies:" "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 opium poppy."

With "cannabis" substituted for "opium," the Article 23 requirements are as follows:

- The establishment of one or more government agencies to carry out the functions required in article 23 [Note: it can be argued that the agency or

agencies with responsibility for administering the controls are not part of the “system of controls” and thus this provision does not apply to cannabis.]

- The agency (or agencies) shall designate the areas in which, and the plots of land on which, cultivation of the [cannabis plant] for the purposes of producing [cannabis] shall be permitted; [Note: the use of the terms “areas” and “plots” would not support the conclusion that a single area or plot is mandated by the Convention.]
- Only cultivators licensed by the agency {or agencies) shall be authorized to engage in such cultivation; [Note: again, use of the term “cultivators” suggests that the Convention contemplated more than one cultivator could be licensed]
- Each license shall specify the extent of the land on which the cultivation is permitted;
- All cultivators of the [cannabis plant] are required to deliver their total crops to the government agency (or agencies) not later than four months after harvest;
- The agency (or agencies) have the exclusive right of importing, exporting, wholesale trading and maintaining stocks other than those held by manufacturers of [cannabis] alkaloids, medicinal [cannabis] or [cannabis] preparations. Parties need not extend this exclusive right to medicinal [cannabis] and [cannabis] preparations.

The Commentary to the Single Convention explains that “Licenses to grow the poppy for the production of opium [substitute “cannabis plant for the production of cannabis or cannabis resin”] may be issued to individual farmers or to corporate bodies.” It continues, “the authorization of a state farm to cultivate [the cannabis plant for cannabis or cannabis resin] would be a license within the meaning of the subparagraphs under consideration.”

Nothing in the text of the Single Convention, nor in the Commentary, suggests that there is a limitation on the number of licenses that can be issued, nor, on the other hand, is there a prohibition against member states imposing such a limitation. While the language is clear that a government agency (or agencies) is to exercise control over the cultivation of marijuana, this is done through the granting of licenses to cultivators. The Convention unambiguously states that a party is not required to extend the exclusive rights over importing, exporting, or maintaining stocks to medicinal opium or opium preparations, and by operation of Article 28, this provision applies

equally to the export, import, or maintenance of medicinal cannabis or cannabis preparations. Thus, where a party permits cannabis to be dispensed for medicinal uses, the Convention does not require that party to maintain exclusive rights over importing, exporting or maintaining stocks of medicinal cannabis. Although a number of states in the United States do authorize medicinal uses of marijuana, the federal government does not so this provision of Article 28 has no effect in the United States.

2. Are countries that license multiple private businesses to cultivate cannabis, such as Canada, currently in violation of the Single Convention?

As explained above, the Convention does not address the number of cultivation licenses that can be issued. If the sole factor to be evaluated was the number of licenses a party had issued, the United States would not be in a position to argue that the action was in contravention of the Single Convention. Moreover, we are not aware that the International Narcotics Control Board has highlighted the number of licenses as an issue of concern. That said, parties are under a general obligation, subject to the provisions of the Single Convention, to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs. It would not be unreasonable for a government to determine that restricting access to a single license is the most effective way to permit access while limiting the opportunities for diversion.