



Scope and definition of the exemption covering “hemp” in the international drug control Conventions.

A total exemption - by purpose.



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The exemption of drugs used in industrial contexts is a core principle of the International Drug Control Conventions (IDCC).¹ Both the 1961 Single Convention on Narcotic drugs as amended by the 1972 Protocol (C61) and its complementary treaty, the 1971 Convention on Psychotropic Substances (C71) only address medicines and the pharmaceutical sector – thus providing repeated statements that their provisions do not apply to “drugs” when used for any other purposes than medical and scientific ones.

In addition to numerous general exemptions for all drugs, the writers of the Conventions, respectful of the important uses of “industrial hemp” but also anticipating advancement in technology and industry, secured the non-inclusion of “hemp” by adding specific dispositions.

1. Exemption for products used in industrial settings

1.1. Exemption of non-drug Cannabis products from the Conventions

As products, *Cannabis* stems, roots, seeds, leaves, or any other botanical part that is not a “flowering or fruiting top” are not considered as drugs. The only “drugs” from *Cannabis* are those listed in the Schedules (see Box 10), i.e. flowering/fruiting tops, the resin, extracts and tinctures⁶ and THC⁷. The rest of botanical parts are not considered drugs and do not fall under the régime applicable to drugs under the IDCC.

Box 1: C61, article 1(1).

“(b) “Cannabis” means the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops) from which the resin has not been extracted, by whatever name they may be designated.

(c) “Cannabis plant” means any plant of the genus Cannabis.

(d) “Cannabis resin” means the separated resin, whether crude or purified, obtained from the cannabis plant.

[...]

(j) “Drug” means any of the substances in Schedules I and II, whether natural or synthetic.”

The Commentary on C61,² a document asked for, and edited by the Secretary-General of the United Nations in 1973 as a guideline for the interpretation of the Convention, confirms that the C61 Single Convention only requires the application of measures of control over the parts of *Cannabis* that are mentioned in the Schedules (and therefore “that are considered “drugs”), plus the leaves in specific case at the discretion of each signatory country. Under no other circumstance will the régime of the Convention apply to products or substances that are not explicitly mentioned (see Boxes 2 and 10).

Box 2: Secretary-General Commentary on C61, article 1(1)j.

1. The term “drug” as defined in this subparagraph covers all substances for which the Single Convention requires the application of control measures except:

- (a) The opium poppy, ¹ coca bush ² and cannabis plant, ³
- (b) Poppy straw, ⁴
- (c) The leaves of the cannabis plant; ⁵ and
- (d) “Substances which do not fall” under the Single Convention, “but which may be used in the illicit manufacture of drugs”. ⁶

Note that “leaves” are present here because, although not being present in the Schedules, a specific disposition of C61 allow countries that desire to apply the measures of control prevailing for drugs. *De facto* leaves have the same status as seeds (i.e. exempted) but a country can decide to apply the measures of control prevailing for flowering and fruiting tops if that countries considers it appropriate.

1.2. Exemption of Cannabis drugs from the Convention, when used in industry

The exemption of drugs used in industry is a core principle of the IDCC, both C61 and C71 Treaties unequivocally allow for the use of any drug placed under the scope of their control, as long as such use takes place within a both non-medical and non-scientific setting, i.e. for the industrial manufacture of goods not considered as “drugs” by these Conventions.

The Commentary recognizes that not only this provision was included to cover industrial uses of controlled drugs known at the time, but also to foresee future developments in the uses of drugs for other than medical (including “abuse”) or scientific purposes (i.e. not related to their psychoactivity) (see Box 4).

This is what the world has been witnessing with the increased use of products derived from the *Cannabis* plant that are used for purposes not related to the psychoactive effects characteristics of the THC molecule, not only fibre and seed-related products but also for instance CBD-rich extracts or other preparations with only trace-amounts of THC, and therefore not liable to be abused or to provoke similar “ill-effects” than those of THC, according to the assessment made by the World Health Organization (WHO)^{3,4}.

Box 3: C61, article 2(9).

“Parties are not required to apply the provisions of this Convention to drugs which are commonly used in industry for other than medical or scientific purposes, provided that:

(a) They ensure by appropriate methods of denaturing or by other means that the drugs so used are not liable to be abused or have ill effects (article 3, paragraph 3) and that the harmful substances cannot in practice be recovered; and

(b) They include in the statistical information (article 20) furnished by them the amount of each drug so used.”

The statement of Article 2(9) is confirmed in Article 4 (referring to the general obligations for the signatory countries). Article 4 only refers to “medical and scientific purposes” for all the activities which involve drugs that are covered by the C61 treaty. “Recreational use” is included as “abuse” in a subset of “medical use” (i.e. non-legitimate medical use and/or diversion from an initial medical purpose of the use). Consequently, any drug used for any other than medical or scientific purposes is disregarded by the control measures applying to C61-controlled drugs.

Box 4: Secretary-General Commentary on C61, article 2(9).

Commentary

1. The provisions of this paragraph were already included in the Second Draft of the Single Convention on Narcotic Drugs,¹ prepared by the Secretariat of the United Nations in accordance with decisions of the Commission on Narcotic Drugs. When the Commission decided at its tenth session to incorporate these provisions in the Draft Treaty,² it was mentioned in the discussion that morphine was used in certain processes of photography.³ How frequent this use was, and whether it still exists at present, are not known to the Secretariat of the United Nations; but cases certainly occur in which chemicals commonly used in industry for other than medical or scientific purposes turn out also to have useful medical properties.² It cannot therefore be excluded that a drug falling under the international narcotics régime, or a substance which because of its dangerous properties should be placed under that régime by operation of article 3, might be needed for wide use in industrial processes other than those of pharmaceutical factories. It would hardly be feasible to apply to drugs used in industrial processes the restrictive controls of the international narcotics régime.

2. It was mentioned in the Plenipotentiary Conference, during the discussion of the draft of the paragraph under consideration,⁴ that the provision was of no immediate practical importance, but had been inserted to anticipate possible future developments.⁵ The developments appear still to be in the future at the time of this writing.

Box 5: C71, article 4(b).

“In respect of psychotropic substances other than those in Schedule I, the Parties may permit: [...]”

(b) The use of such substances in industry for the manufacture of non-psychotropic substances or products, subject to the application of the measures of control required by this Convention until the psychotropic substances come to be in such a condition that they will not in practice be abused or recovered”

It is worth noting that THC is currently controlled in Schedule II of C71, therefore is eligible for exemption in case of use in industrial settings, and as long as

The WHO has emitted a recommendation⁴ which, if adopted, would withdraw THC from the C71 and place it in Schedule I of C61, where it would also be eligible for exemption in industrial settings (see Box 3).

THC, controlled under C71, falls under the exemption of this article when present in trace-amounts (not practically recoverable nor abusable) in an industrial product (i.e. a product not used for medical, including abuse, or scientific purposes).

1.3. Trace-amounts do not justify control

Per se, CBD is not included in the Schedules of C61 or C71 and therefore is exempt from the controls of these Conventions. WHO did not recommended to schedule it, therefore no action can be taken to include CBD in the Schedules against the assessment of WHO⁵ (pp. 63-4). The trace amount of THC they may contain are not, however, an obstacle to consider products of *Cannabis* with trace-amounts be under controls, as such amounts are not present in a yield and condition that would allow in practice THC to be recovered, “abused” and therefore fall under the controls of the IDCC.

Besides this interpretation being recently pushed forward by the WHO Expert Committee on Drug Dependence following their assessment of *Cannabis* undertaken in 2018^{3,4}, trace amounts seem to have always been regarded as invalid justifications for control (Box 6).

Flowering or fruiting tops “from which the resin has been extracted” are not drugs, and do not fall under the C61 régime. Pages 4-5, the Commentary discusses this exemption, and explains that “This exclusion may be justified on the grounds that the tops from which the resin has been extracted contain only a very insignificant quantity of the psychoactive principle.” This statement suggests that a product obtained from the *Cannabis* plant, and not considered as a drug (“tops” from which the resin has been extracted, in this case), even when containing trace-amounts of a clearly controlled drug (“resin” in this case), has grounds to be treated as fully exempted from the scope of the Convention.

Box 6: Secretary-General Commentary on C61, article 1(1)b.

numerous names. It may be noted that the Single Convention excludes from its definition of cannabis the tops of the plant from which the resin has been extracted. The authors of the 1925 Convention did the same in their definition of “Indian hemp” as the drug was then commonly called. They used to this effect the same words as the Single Convention.¹³ This exclusion may be justified on the ground that the tops from which the resin has been extracted contain only a very insignificant quantity of the psychoactive principle.

2. Exemption for the cultivation of *Cannabis* to be used for industrial purposes

This non-inclusion of drugs destined to industry-related purposes, and its application to *Cannabis* as well, is corroborated by an exclusion of the cultivation of *Cannabis* from the scope of the Convention when such cultivation is undertaken for industrial purposes. Article 28(2) states that C61 as a whole “shall not apply to the cultivation of the cannabis plant exclusively for industrial purposes”

Box 7: C61, article 28(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.”*

The “(fibre and seed)” present in the text is of secondary importance, as the focus of the exclusion is that of “industrial purposes” and “horticultural purposes.” The Commentary (pp. 312-5) clearly explains that the obligations of the Convention related to cannabis cultivation apply only to the cultivation of the cannabis plant for the production of psychoactive cannabis and psychoactive resin sought for medical or scientific purposes. The Commentary (p. 312, see Box 8) continues by explaining that **“cultivation for any other purpose [than medical or scientific], and not only for [industrial (fibre and seed) and horticultural purposes] is consequently exempted”**. This is corroborated by C61 art. 2(9), (see Box 3).

Such precision is nothing more than a total alignment with the principle of exemption prevailing for drugs, explained in the first section of this document. Article 28 extends to the processes of obtention (cultivation) of these products, such comprehensive exclusion from the scope of controls and provisions of the IDCC.

Box 8: Secretary-General Commentary on C61, article 28(2).

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.

It is worth noting that the presence of “fibre and seed” in the sentence has often served as a basis to a reading pretending to restrict the exemption only to these parts. Such a statement does not hold (i) the reading of the Convention itself, as “horticulture” is an activity involving flowers which is exempted in the same article, and which therefore de facto extends the exemption beyond solely “fibres” and “seeds;” and (ii) this article does not concern final products but cultivation – and it is challenging to imagine the cultivation of only “fibre and seeds” without all the other parts of the plant.

In an oral statement to the Commission on Narcotic Drugs mentioned in the written proceedings issued by the United Nations Office on Drugs and Crime (UNODC)⁵, a representative of the International Narcotics Control Board (INCB) declared (p. 53) “the 1961 Convention limits the cultivation of cannabis for industrial purposes to fibre and seed.” Historically often aligned with the positions of the INCB, the delegation of the United States of America however immediately opposed such statement (p. 10) explaining: “The INCB stated that the industrial uses are limited to fibers and seeds. The Convention does not expressly state a limitation. What is the basis for the INCB interpretation that the phrase “(fibres and seeds)” means exclusively fibers and seeds?” No further explanation was provided by the INCB on their position.

The first draft of the C61 Single Convention prepared by its Conference of Plenipotentiaries, included “fibre and seed” as the very object of the planned exemption. At first, the terminology was withdrawn and replaced with that of “industrial purposes.” The words “fibre and seed” were finally added again in the last version of the Convention between brackets – as an intent to help understand the meaning of “industrial use” while not limiting it to these two botanical parts of the plant. The discussions of the Plenipotentiaries show no intention to limit exclusively the exemption of this article to “fibres and seeds,” and it is clear that the spirit given to the Treaty by its writers was that of providing enough room for the by-then

broad, diverse and global “hemp” sector to continue existing and developing as future industrial uses appear.

The misunderstanding of the meaning of brackets must not prevent from finally understanding and applying the spirit and letter of the Single Convention: a non-application of its provisions to all purposes not related to medical, scientific purposes and abuse.

Box 9: Purposes under control of C61.		
Controlled under C61	Scientific purposes	Legitimate use
	Medical purposes	Legitimate use
		Non-legitimate use / abuse
Not controlled by C61	Direct exemption	Industrial purposes other than fibre and seed
		Industrial purposes (fibre and seed, in the case of <i>Cannabis</i>)
		Horticultural purposes
	Indirect exemption	Any other purpose not listed above

3. Conclusion

We therefore face a multi-dimensional exemption of hemp from the Single Convention:

- Cultivation of the plant is disregarded when undertaken for any purpose other than pharmaceutical production or research (Article 28(2), Commentary pp. 312-5);
- b) Non-tops parts of *Cannabis* are excluded from the scope of the Convention, because they are not considered a drug (Article 1(b), Commentary pp. 2-4 and 312-5);
- *Cannabis* tops when deprived of “resin” (psychoactive compounds, i.e. THC) are not considered a “drug”, and fall out of the scope of the Convention (Article 1(1)b., Commentary pp. 2-4, and Article 1(1)d., Commentary p. 5);
- Furthermore, even *Cannabis* tops that are not deprived of “resin,” i.e. *Cannabis* as a “drug,” when used in industrial settings, is exempt from the Convention’s controls (Article 2(9) and Commentary pp. 71-3),

These exemptions are cumulative and mutually-reinforcing. They authorize the cultivation, processing and further use of the harvests and derivatives of what we commonly call “hemp.” Their common criteria for exemption is the concept of purpose, which must differ from those related to pharmaceutical drugs (“legitimate” and “abuse”/“misuse”) and scientific research. **In the letter and spirit of the IDCC, “hemp” is exempted by purpose of cultivation and by purpose of use of its derivatives.**

Box 10: Status of Cannabis in the Schedules of C61 and C71.	
Schedules of the 1961 Convention (C61)	Current Scheduling
<p style="text-align: center;">C61 – Schedule IV</p> <p style="text-align: center; font-size: small;">Particularly dangerous properties. Especially liable to abuse and to produce ill-effects. Little or no therapeutic value or a therapeutic value that is also possessed by another drug not in this Schedule.</p>	<div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border: 1px solid white; border-radius: 50%; padding: 10px; background-color: white; color: black;">Fruiting tops</div> <div style="border: 1px solid white; border-radius: 50%; padding: 10px; background-color: white; color: black;">Resin</div> </div>
<p style="text-align: center;">C61 – Schedule I</p> <p style="text-align: center; font-size: small;">High liability to abuse and to provoke addiction. Or precursor substances directly convertible into a drug similarly addictive and liable to abuse.</p>	<div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border: 1px solid white; border-radius: 50%; padding: 10px; background-color: white; color: black;">Fruiting tops</div> <div style="border: 1px solid white; border-radius: 50%; padding: 10px; background-color: white; color: black;">Resin</div> <div style="border: 1px solid white; border-radius: 50%; padding: 10px; background-color: white; color: black;">Extracts</div> <div style="border: 1px solid white; border-radius: 50%; padding: 10px; background-color: white; color: black;">Tinctures</div> </div>
<p style="text-align: center;">C61 – Schedule II</p> <p style="text-align: center; font-size: small;">Less liable to abuse and to produce addiction with respect to Schedule I.</p>	/
<p style="text-align: center;">C61 – Schedule III</p> <p style="text-align: center; font-size: small;">Pharmaceutical preparations containing low amounts of narcotic drugs. Unlikely to be abused.</p>	/
Schedules of the 1961 Convention (C61)	Recommended Scheduling
<p style="text-align: center;">C61 – Schedule IV</p> <p style="text-align: center; font-size: small;">Particularly dangerous properties. Especially liable to abuse and to produce ill-effects. Little or no therapeutic value or a therapeutic value that is also possessed by another drug not in this Schedule.</p>	/
<p style="text-align: center;">C61 – Schedule I</p> <p style="text-align: center; font-size: small;">High liability to abuse and to provoke addiction. Or precursor substances directly convertible into a drug similarly addictive and liable to abuse.</p>	<div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border: 1px solid white; border-radius: 50%; padding: 10px; background-color: white; color: black;">Fruiting tops</div> <div style="border: 1px solid white; border-radius: 50%; padding: 10px; background-color: white; color: black;">Resin</div> <div style="border: 1px solid white; border-radius: 50%; padding: 10px; background-color: white; color: black;">THC <i>(all isomers)</i></div> <div style="border: 1px solid white; border-radius: 50%; padding: 10px; background-color: white; color: black; text-align: center;"> <i>...and de facto all of their preparations</i> </div> </div>
<p style="text-align: center;">C61 – Schedule II</p> <p style="text-align: center; font-size: small;">Less liable to abuse and to produce addiction with respect to Schedule I.</p>	/
<p style="text-align: center;">C61 – Schedule III</p> <p style="text-align: center; font-size: small;">Pharmaceutical preparations containing low amounts of narcotic drugs. Unlikely to be abused.</p>	<div style="border: 1px solid white; border-radius: 50%; padding: 10px; background-color: white; color: black; text-align: center;"> Some Schedule I preparations <i>(decided by each jurisdiction)</i> </div>

Schedules of the 1971 Convention (C71)	Current Scheduling	Recommended Scheduling
<p>C71 - Schedule I</p> <p>High liability to abuse. Especially serious risk and threat to public health. Very limited or no therapeutic value(s).</p>	<p>Isomers of THC (e.g., Δ^6 or Δ^8-THC)</p>	/
<p>C71 - Schedule II</p> <p>Regular liability to abuse. Substantial risk to public health. Little to moderate therapeutic value(s).</p>	<p>Δ^9-THC</p>	/
<p>C71 - Schedule III</p> <p>Regular liability to abuse. Substantial risk to public health. Moderate to great therapeutic value(s).</p>	/	/
<p>C71 - Schedule IV</p> <p>Regular liability to abuse. Small but significant risk to public health. From little to great therapeutic value(s).</p>	/	/

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