Legalisation of Cannabis in Some American States
A Challenge for the European Union and its Member States?

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The discussion on the legalisation of cannabis, i.e., the legalisation not only of its possession and use but also of its production and distribution, is not just a discussion of our times. Already in the 1960s this was a hotly debated issue. In particular the lenient policy of the Netherlands vis-à-vis the possession of cannabis for personal use was in the eye of the storm. The discussion on the establishment of a system of licensed coffeeshops in the 1970s became a pole of attraction respectively repulsion for crusaders pro and contra the legalisation of cannabis from all over the world. At the end of the 1980s the global discussion on the legalisation of cannabis flared up again in the framework of the negotiations with regard to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. The proponents of legalisation, however, lost the battle: Articles 3 and 14 of this treaty embody a rather strict prohibitive policy, also in relation to cannabis.

This outcome was — one may not lose sight of this in an European context — in line with the position of the majority in the two inquiry committees which

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1 This editorial is partly based on the manuscript of a book he prepares with Prof. Dr. Brice de Ruyver from Ghent University on the future of the cannabis policy (and coffeeshop policy) in the Low Countries from an international perspective.
were established in the European Parliament in those years. After all, in 1986 the Stewart–Clark Committee came to the conclusion “that cannabis should remain an illegal drug”, although it admitted at the same time that measures should be taken “to encourage a scientific debate on this important problem”. A few years later, in 1992, the Cooney Committee also concluded, after a long and intense debate about the pros and cons of legalisation of drugs and in particular of cannabis, that this was not the way to go. One of the reasons was that the European Union should support the position of the United Nations (“an insuperable constitutional impediment to a policy of legalisation”). Another reason was that a “policy of legalisation” could only be successful if a large number of control measures were taken and that this would “require a police response at least as that required to enforce a regime of prohibition”. A third reason that was put forward, was that “organized crime is not likely to disappear, whether or not the problem of drug trafficking is mastered”.

The entry into force of the 1988 United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances did not mean that The Netherlands abolished the coffeeshop system, although the International Narcotics Control Board put a lot of pressure on the Dutch government to do so. Equally this treaty did not prevent that over the years other European countries developed a more lenient policy vis-à-vis the users of cannabis or even accepted de facto the flourishing of social cannabis clubs, e.g., in Spain. However, neither the European Union nor the individual Member States changed their official stance in this legalisation debate in the last decade and declared themselves openly in favour of the legalisation of cannabis. The fact that the cultivation of cannabis in many Member States — not in the least The Netherlands — over the years has become big criminal business, and that the recreational use of cannabis is rather widespread among certain categories of youngsters and the related addiction problems are increasing, clearly never was sufficient reason for doing so. To date, the Dutch, Belgian, French, German as well as the British government, in any case, have rejected all sorts of national and international proposals to cross the prohibitive fire-line, to establish a regulatory system for the production, the trade and the consumption of

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