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MEMORANDUM

To: International Narcotics Control Board

From: Vicente Sederberg LLP

Date: May 24, 2021

RE: INCB Draft Guidelines on Control Requirements for Medical and Scientific Cannabis: Implications and Important Issues for Consideration

Introduction

On March 24, 2021, the International Narcotics Control Board ("INCB") held its First Intergovernmental Meeting on the third draft of the INCB's Guidelines on "International Drug Control Requirements for the Cultivation, Manufacture, and Utilisation of Cannabis for Medical and Scientific Purposes" (the "Draft Guidelines"). Member States[1] coordinate the control of narcotic drugs and psychotropic substances under three international treaties: the Single Convention on Narcotic Drugs of 1961 (the "'61 Convention"); the Convention on Psychotropic Substances of 1971 (the "'71 Convention"); and the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (referred to hereinafter together with the '61 and '71 Conventions as the "Conventions"). The Conventions' core objective is to limit production and use of narcotic drugs and psychotropic substances and their precursors to medical, scientific, and industrial purposes. Notably, the Draft Guidelines are not final and remain subject to the important collaborative process between INCB, Member States, and other parties. This process offers a critical opportunity to modify the Draft Guidelines from their current form so that they do not have a negative effect on medical-cannabis patients and traditional small growers of cannabis seeking to participate in newly licit medical markets or go largely ignored by the international medical-cannabis industry and by Member States, by: (1) restricting the medical cannabis supply to pharmaceutical models; and (2) promoting an inflexible reading of the Conventions that would further weaken the already-fragile international treaty system.

To support the consultative process in finalizing the guidelines, this memorandum outlines the primary problematic components of the INCB Draft Guidelines that should be addressed:

a. INCB would exceed its authority and overstep its mandate to remain impartial and disinterested were it to adopt, in finalized guidelines, the narrow interpretation of the Conventions championed in the Draft Guidelines;

b. the Draft Guidelines impermissibly attempt to restrict the international medical-cannabis market to medicines composed of primarily pharmaceutical-grade cannabinoids, isolated or synthesized by pharmaceutical companies, thus impeding Member States' traditional

[1] The term "Member States," as used herein, refers to the signatories of the Conventions.

authority to regulate their own medical-cannabis programs based on legitimate interpretations of their treaty obligations;

c. the Draft Guidelines' parallel treatment of cannabis and opium is inconsistent and defy relevant differences with regard to the requirements of the Conventions for the two substances;

d. the Draft Guidelines would impose excessive reporting requirements on cannabis far beyond what is required by the Conventions;

e. the Draft Guidelines should include such policy considerations as social justice reforms and the opportunities that medical cannabis markets may offer in terms of an 'alternative development' strategy for traditional small growers, as is currently being explored, especially in Caribbean and African nations; and

f. many countries, such as the United States ("US"), Mexico, and Canada, will be unable, or unwilling, to implement the Draft Guidelines as they currently stand due to incompatibility with existing medical cannabis programs and restrictions in various Member States' governing laws.

In its supplemental 2020 Report, INCB celebrates the Conventions' longevity while simultaneously acknowledging that technological progress has rendered them anachronistic in important respects.[2] INCB suggests that Member States update their reporting requirements to ensure compliance with the Conventions and admonishes them for updating their medical-cannabis programs to accommodate modern realities.[3] If INCB is going to interpret the Conventions in light of modern realities, then it must permit Member States to calibrate their own programs to reflect modern systems and contemporary understandings of the safety and efficacy of medical cannabis.

Before the Draft Guidelines are finalized, there are important opportunities for INCB to improve its position through its consultation process. Such consultations should involve not just Member States, but also civil society, patient groups, and industry participants, to help ensure that finalized guidelines are more accurately in line with the spirit of the Conventions. Primarily, INCB should not try to impose its own restrictive treaty interpretation depriving Member States of their authority, which is expressly delegated to them under the Conventions. Rather, in its attempt to bringing the Conventions in line with modern developments and scientific realities, INCB should embrace its mandate and look to more sensible approaches to regulating medical cannabis in a manner consistent with the Conventions.[4]

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2 INCB, *Guidelines on the international drug control requirements for the cultivation, manufacture and utilization of cannabis for medical and scientific purposes, Draft*, March 22, 2021, at 9; INCB, *Report 2020*, at 54; INCB, *Celebrating 60 Years of the Single Convention on narcotic Drugs of 1961 "…a generally acceptable international convention …" and 50 Years of the Convention on Psychotropic Substances of 1971 "… an international convention is necessary …,"* 2020 (referred to hereafter as "INCB, *Supplemental Report*").

3 *See* INCB, *Supplemental Report*.

4 INCB, *Supplemental Report*, at 6.

I. Final INCB Guidelines Should Incorporate the Modernization of Convention Requirements and Allow Member States to Do the Same

INCB has stated that its goals in issuing the Draft Guidelines are "the harmonization of the control, monitoring and reporting practices of cannabis and related substance . . ." with an overall objective of "support[ing] Member States in their implementation of relevant control and reporting provisions."[5]

In its process to finalize the guidelines, INCB should ensure that its efforts to promote consistency and compliance are within its authority, so INCB does not "make comments on matters that are the sole purview of national governments."[6] INCB is not the guardian of the Conventions. The Conventions intentionally limit INCB's authority to register reporting issues and monitor treaty compliance. INCB is meant to be an "independent and quasi-judicial monitoring body"[7] and its goal in issuing the Draft Guidelines is to "achieve greater uniformity in good practices around cultivation, manufacturing, distribution and global trade."[8] In circumstances where INCB's interpretation is at odds with that of Member States, INCB's role as a monitoring body is to work to reconcile such differences, to review the best approaches that arise from the debate, and then work to reconcile differences between Member States' positions, assessing the options that emerge as the debate progresses. Then, it is the duty of Member States to defend and enforce specific positions and approaches as being compliant. In finalizing the guidelines, INCB must ensure that the guidance serves to help inform the decisions of national governments and the General Assembly, United Nations Economic and Social Council ("ECOSOC"), and the CND.[9]

In addressing domestic drug policy, final guidelines should be revised so that the following components are left to Member States to devise and implement under Convention requirements, not INCB: (1) developing a comprehensive framework for a medical cannabis regulatory system; (2) defining medical use of cannabis-based products; and (3) creating mandatory reporting requirements that are not binding under the Conventions. All of which can only be adopted after an affirmative vote by Member States pursuant to the Conventions amendment requirements. Ultimately, if a legal dispute about how to interpret and implement the treaty provisions cannot be resolved by dialogue and negotiation among the parties, then the only authority mandated to decide such disputes is the International Court of Justice – not INCB.

Finally, INCB's important acknowledgment that the Conventions should be updated to account for technological advances around extracting psychoactive substances from the leaves and seeds of cannabis plants[10] (which are specifically excluded from Convention control) should be meaningfully considered in the guidelines, while simultaneously acknowledging that such control rests solely with Member States. Such consideration should simply encourage Member States to implement programs based upon modern science and current data about the cannabis plant.

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[5] INCB, *Guidelines*, at 2.
[6] tni, *The UN Drug Control Conventions* (2015), https://www.tni.org/my/node/22317#9b.
[7] International Narcotics Control Board, *Our Mission*, (last viewed May 17, 2021), https://www.incb.org/incb/en/index.html.
[8] INCB, *Guidelines*, at 2.
[9] Id.

a. Medical-Cannabis Use Is Inappropriately Limited to Pharmaceutical Models

INCB's Draft Guidelines impose a rigid framework based on a selective and strict reading of the Conventions that place control of the global medical-cannabis trade primarily within the pharmaceutical industry. This is in stark contrast to: (1) the renewed importance the World Health Organization ("WHO") has given to a Government's ability to promote traditional and herbal medicines;[11] (2) Member States' clear and unambiguous discretion to decide which medical-cannabis-based products are approved for medicinal purposes;[12] (3) prioritizing the health and welfare of mankind through safe access to medical-cannabis; and (4) the Conventions and its Commentaries,[13] which make no reference to only pharmaceutical preparations qualifying as a legitimate medical use.[14]

Since the international trade of medical-cannabis already exists successfully outside of the pharmaceutical industry, the Draft Guidelines appear to provide a solution to an illusory problem and do nothing to resolve the differences in treaty interpretations and practices between Member States. For instance, if the US were to legalize medical-cannabis under federal law, it would likely join the many Member States that participate in the current system of international trade of medical-cannabis, which is not primarily limited to a pharmaceutical model and has "virtually no diversion of narcotic drugs or psychotropic substances from licit manufacture and international trade to illicit trafficking."[15]

The Draft Guidelines limit medical use of cannabis to primarily the development of single-molecule/cannabinoid medications within existing Member State frameworks for pharmaceutical drug development (clinical trials for safety and efficacy) and dispensing (prescribed by physicians and made available through national pharmaceutical regulatory system). In continuing to develop the guidelines, INCB should ensure that the guidelines do not improperly interpret the Conventions so that only the following pharmaceutical preparations of cannabinoids qualify as a legitimate medical use: (1) extracts and tinctures, which for the purposes of the Draft Guidelines, are Active Pharmaceutical Ingredients ("API") derived from starting material (cannabis, cannabis resin, or synthetic substances); and (2) cannabis preparations, which for purposes of the Draft Guidelines, are preparations containing a cannabis extract (an API) or a psychotropic substance – also known as cannabis-based medicine. The Draft Guidelines provide too narrow of an interpretation of the Conventions and Commentaries and do not support INCB's claim that pharmaceutical preparations of cannabinoids are primarily what qualify as legitimate medical use.

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[11] World Health Organization, *WHO traditional medicine strategy: 2014-2023 (Dec. 2013),* https://www.who.int/medicines/publications/traditional/trm_strategy14_23/en/.

[12] United Nations, "*Commentary on the Single Convention on Narcotic Drugs, 1961*," (Aug. 3, 1962), at 111.

[13] The term "Commentaries," as used herein, refers to the official commentaries of the Conventions.

[14] On the contrary, the '61 Convention Commentary says: 'The term 'medical purposes' does not necessarily have exactly the same meaning at all times and under all circumstances. Its interpretation must depend on the stage of medical science at the particular time in question . . .. Martin Jelsma, Tom Blickman, Sylvia Kay, Pien Metaal, Nicolas Martinez, Dania Putri, *A Sustainable future for Cannabis Farmers 'Alternative Development' Opportunities in the Legal Cannabis Market,* Unpublished (April 2021) (citing, United Nations, "*Commentary on the Single Convention on Narcotic Drugs, 1961*," (Aug. 3, 1962), at 111).

[15] INCB, *Supplemental Report*, at iii.

With the goal of promoting the health and welfare of mankind, it is inconsistent to promote pharmaceutical cannabis, such as "preparations containing dronabinol," which could potentially have adverse effects on the consumer if not used according to the prescription, while simultaneously trying to control CBD, which has a good safety profile and minimal, if any, adverse effects (discussed further below).

II. The Draft Guidelines Inappropriately Analogizes That Cannabis Is to Cannabinoids as Opium to Opioids

The Draft Guidelines were intended to provide "information on practical aspects of the control and reporting requirements of the 1961 and 1971 Conventions as they relate to cannabis activities . . .."[16] But, the Draft Guidelines are fundamentally flawed where they draw unsound conclusions by inaccurately comparing cannabis to opium, indicating a misunderstanding of the Conventions. The Draft Guidelines begin by stating that monitoring and control requirements for cannabis are the same as for opium.[17] However, the Conventions make important distinctions between the two—especially when it comes to reporting requirements. While it is true that the cultivation of opium poppy and the manufacture, distribution, and dispensing of opioids are carefully controlled, the Draft Guidelines for cannabis go well beyond levels of control currently in place for opium poppy cultivation.

The Conventions do not limit exports of opium to "global pharmaceutical manufacturing sites"[18] or limit prescriptions to "codeine, morphine, or oxycodone."[19] In fact, the '61 Convention explicitly permits the export of medical opium itself.[20] Finalization of the Draft Guidelines must include a careful assessment of these provisions so as not to misinterpret that the Conventions regard opium only as a raw material for the medicinal use of its extracted compounds, and dangerously apply this misinterpretation to cannabis. For example, the Draft Guidelines require that cannabis plant material, only be regarded as a raw material, or in exceptional circumstances as an API, and not as a medicine itself.[21] This interpretation is clearly not supported by the Conventions or Convention Commentaries.

Finally, opium and cannabis are vastly different substances. While they share a similar strict classification in the treaty schedules, opium and its pharmaceutical derivatives are proven to be far more dangerous than cannabis, with overdoses killing tens of thousands of people each year. In contrast, the WHO has concluded that it would be impossible for a human to ingest a lethal dose of THC, and thus THC has a "large margin of safety."[22]

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[16] INCB, *Guidelines*, at 2.
[17] Id., at 4.
[18] See Ibid.
[19] *See* Ibid.
[20] Article 1 of the 61' Convention defines medicinal opium as opium which has undergone the processes necessary to adapt it for medicinal use. United Nations, *Single Convention on Narcotic Drugs, 1961: As amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961*, Art. 1.
[21] INCB, *Guideline*, at 6.
[22] WHO Expert Committee on Drug Dependence Pre-Review, "*Delta-9-tetrahydrocannabinol: Section 3: Toxicology*," Section 1.1 (2018); INCB, *Supplemental Report*, at 28.

III. The Draft Guidelines Incorrectly Include Cannabis in Certain Reporting Requirements

The Draft Guidelines, if implemented in their current form, would impose substantial reporting requirements upon Member States not required under the Conventions, including reporting the total quantity of cannabinoids at each stage of the supply chain.[23] Additionally, INCB has continuously insisted that, pursuant to Article 19(e) of the '61 Convention, Member States must report "[t]he area (in hectares) and the geographical location of land to be used for the cultivation of [cannabis]."[24] However, Article 2, specifically states that this reporting requirement is explicit to only the reporting of opium poppy.[25] Article 2(1) states that "except as to measures of control which are limited to specific drugs, the drugs listed in Schedule I are subject to all measures of control applicable to drugs under this Convention. . ."[26] Article 2(7) then states that "[t]he opium poppy, the coca bush, the cannabis plant, poppy straw and cannabis leaves are subject to the control measures prescribed in Article 19, paragraph 1, subparagraph (e), article 20, paragraph 1, subparagraph (g), article 21 and in articles 22 to 24, 22, 26 and 27; 22 and 28; 25; and 28, *respectively* (emphasis added)."[27] Therefore, unless specifically stated otherwise therein, the requirements of Articles 19(1)(e), 20(1)(g), 21 bis, and 22 through 24 apply to only Opium Poppy and no other substance, including cannabis. Thus, the Draft Guidelines substantially increase reporting requirements for Member States and provide a literal roadmap for black market actors to locate legal cultivation facilities, risking the safety of farmworkers and increasing the diversion of cannabis.

IV. Treating CBD as a Controlled Extract of Cannabis Would Eliminate the Global Regulated Hemp-CBD Industry

In publishing finalized guidelines that would prove unworkable under many modern, reasonably regulated programs, INCB risks such guidelines going largely ignored by Member States. The INCB "can't control today's challenges with yesterday's methods; [it has] to modernize and make sure [its] approaches are responsive to current trends."[28] If the Draft Guidelines continue in their current form, many Member States would ignore the guidelines with respect to the control of cannabidiol ("CBD") and other phytocannabinoids, since attempting to follow them would decimate successful and promising hemp/CBD industries.[29] If INCB desires to reassess approaches for medical-cannabis, then it must consider current programs and provide practical recommendations that: (1) fit into current regulatory regimes of Member States; (2) acknowledge that INCB does not have an active role in facilitating trade of CBD, since CBD and other

[23] INCB, *Guidelines*, at 9.

[24] United Nations, *Single Convention on Narcotic Drugs, 1961: As amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961*, Art. 19(e).

[25] Id., at Art. 2.

[26] United Nations, *Single Convention on Narcotic Drugs, 1961: As amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961*, Art. 2(1) (listing specific Articles that should be paid special attention to).

[27] Id., at Art. 2(7).

[28] US Mission to International Organizations in Vienna, *64th Session of the Commission on Narcotic Drugs – Agenda Item 3: U.S. National Statement* (April 12, 2021), https://vienna.usmission.gov/national-statement-to-cnd2021/ (adjustments to the quote replaced "we have" and "our," respectively, as referencing Member States, with references to INCB).

[29] *See* Vicente Sederberg LLP, *Memo to the INCB Regarding International Control of CBD Preparations and the Impacts of Potential Reforms* (Dec. 1, 2021), https://vicentesederberg.com/insights/incb-contestation/.

phytocannabinoids do not fall within the Conventions' control and INCB's mandate; and (3) promote a reasonable interpretation of the Conventions.

The notion that CBD is under control of the Conventions as an extract of medical-cannabis has been strongly contested.[30] INCB's position must consider that Member States are tasked with interpreting and enforcing the Conventions' requirements, subject to interpretive rules, and that latitude is given to a Member State to defend and enforce specific positions related to drug control in its home country. As a result, a growing number of Member States, including the US, have expanded access to preparations of CBD, containing low levels of THC, by embracing sensible interpretations of the language and spirit of the Conventions that support the reasonable regulation of such substances.[31] To ensure that finalized guidelines are in line with the Conventions and the practices of Member States, it is critical that INCB reassess its inclusion of CBD in the Draft Guidelines,[32] since "[CBD] shows no potential for abuse or dependence, and any ill-effects are minimal,"[33] and thus CBD does not satisfy the criteria for control.[34] Additionally, ". . . according to the current state of scientific knowledge, which it is necessary to take into account . . ." recent studies have shown that preparations of CBD containing low-levels of THC (*e.g.*, containing no more than 1% THC) do "not appear to have any psychotropic effect or any harmful effect on human health."[35]

In finalizing the Draft Guidelines, INCB must carefully consider the science on CBD, the reality of the global industry, and accepted interpretations of the Conventions. The Draft Guidelines risk harming the already weak international controls on medical-cannabis since many countries will not forego their current regulated and responsible medical-cannabis programs in favor of a more stringent and costly system based on an overly restrictive interpretation of the Conventions.

V. Many Member States Will Be Unable, or Unwilling, to Follow the Guidelines:

a. Draft Guidelines Are at Odds with Existing Regulations of Many Member States

Many Member States, including the US, Australia, Colombia, Switzerland, and Lebanon,[36] have already implemented hemp programs that exceed the 0.2% THC threshold rejected by Member

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30 Id.; UN, *CND Votes on Recommendations for Cannabis and Cannabis-Related Substances (Dec. 3, 2020), https://www.unodc.org/unodc/en/frontpage/2020/December/cnd-votes-on-recommendations-for-cannabis-and-cannabis-related-substances.html.*

31 Id.

32 The Guidelines also include the following elements/phytocannabinoids by reference: Δ 9 -THCA; CBDA; CBG; CBGA; CBN; CBNA; CBC; CBCA; THCV; THCVA; CBDV; CBDVA; CBL; CBLA; and Δ 8 -THC.

33 CND, *Questions and answers relating to WHO's recommendations on cannabis and cannabis-related substances*, (Nov. 26, 2019), at 65.

34 Id., at 66.

35 Case C-663/18, B S and C A v. Ministère public et Conseil national de l'ordre des pharmaciens, 2020 E.C.J. 141/20 (it should be noted that this decision was specific to the CBD at hand, but the Court's rationale applies a litmus test to prohibiting CBD, that will likely be used in future court rulings); Franjo Grotenhermen and Michael Karus, "*Industrial hemp is not marijuana: Comments on the drug potential of fiber cannabis*," (last visited Oct. 12, 2020) http://www.internationalhempassociation.org/jiha/jiha5210.html.

36 INCB, 2020 Report, at 89.

States.[37] INCB recommends that "countries implement policies and approaches based on scientific evidence."[38] As more scientific data and safety studies emerge, the US, European Union ("EU"), and other Member State governments are considering increasing the THC threshold to 1%, as is already the standard in countries such as Australia, Belize, Colombia, Ecuador, Switzerland, and Uruguay. As with other international treaties, these policy choices, and legislative and administrative measures are left to the discretion of Member State Governments, which fall squarely within the limits set by the Conventions.[39]

INCB's attempt to further restrict hemp to a content no greater than 0.2%,[40] is unfounded in the Conventions, and such an arbitrary and capricious limit was further eroded by the EU Court of Justice, which, in November 2020, held that "CBD does not contain a psychoactive ingredient in the current state of scientific knowledge," and that, "while it is true that a literal interpretation of the [1961 Convention] might lead to it being classified as a drug, in so far as it is a cannabis extract, such an interpretation would be contrary to the general spirit of that convention and to its objective of protecting 'the health and welfare of mankind.'"[41]

Finally, even if these overly restrictive Draft Guidelines are finalized in their current form, the governments of many Member States will be unable to implement them under their respective governing documents. For example, Australia, maintains a federalist-type system, and like the US (discussed below), has seen states legalize in the face of federal prohibition.[42] Other countries like Italy,[43] Mexico,[44] and South Africa[45] are prevented, by judicial decree, from penalizing individuals for personal use and cultivation of cannabis, and thus a regulated market is the most common-sense step forward. This is especially true since INCB has already accepted that the treaties allow for Member States to decriminalize personal-use related offenses, so if decriminalization for non-medical use is allowed, then certainly patients cultivating cannabis, for their personal medical use, is also allowed under INCB's strict interpretation of the Conventions.

In recommendation 10 of INCB's *2020 Report*, INCB calls "upon Governments to counter drug trafficking and related violence through comprehensive and balanced measures[, through the] development [of] initiatives that target the financial incentives offered by drug trafficking."[46] What may be overlooked by INCB, is that a properly regulated market is an effective measure for

[37] While the EU and some African countries currently apply a 0.2% THC threshold for hemp, there is an initiative in the European Parliament to increase it to 0.3%. "*A Sustainable future for Cannabis Farmers 'Alternative Development' Opportunities in the Legal Cannabis Market"*, Unpublished (April 2021) (citing to *See* Hemp Industry Daily, *European Parliament votes to add 0.3% THC limit for hemp to EU policy overhaul* (Oct. 26, 2020).

[38] INCB, *Supplemental Report*, at 13.

[39] Id., at 23.

[40] INCB, Guidelines, Unpublished second draft (March 2021) (INCB Included the same 0.2% THC definition for "hemp" that was defeated at the December 2020 CND meeting.).

[41] *See* Court of Justice of the European Union, Case C-663/18, B S and C A v. Ministère public et Conseil national de l'ordre des pharmaciens, 2020 E.C.J (Nov. 19, 2020), https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-11/cp200141en.pdf. (This ruling was specific to the facts of the case, but as discussed, a 0.2% threshold has no basic in science or fact, and thus would likely be struck down by the Court in subsequent rulings.).

[42] INCB, *2020 Report*, at.29-30, 105.

[43] Id., at 30, 99.

[44] Id., at 31.

[45] Id., at 55.

[46] Id., at 112.

removing financial incentives for the illicit trade in drugs and helps prevent licit products and materials from entering the illicit market.[47] Contrary to INCB's assertion that countries cannot implement and regulate commercial programs, a failure to do so will only increase diversion into the illicit market since these countries will be unable to enforce prohibition.

b. The US Will Be Unable to Follow the Recommendation Within the Guidelines, Even If It Signs On to a Finalized Version of the Draft Guidelines

As a world leader, US compliance with treaty requirements is heavily scrutinized. Therefore, any finalized guidelines should not only consider whether the US will support them but whether the US will even be able to follow them. As written, the US Congress will be unwilling and unable to do so.

First, the federal government does not have the authority to require States to implement federal programs unless the federal government passes specific legislation providing such funding and/or resources to states. This restricts the US government's ability to adequately implement the type of program recommended by the Draft Guidelines. Second, should the US pass legislation establishing a program that is in line with the Draft Guidelines, it would likely result in the elimination of existing state-run medical programs. 36 of the 50 states[48] and the District of Columbia have implemented comprehensive, publicly available medical-cannabis programs. Garnering enough support in Congress (which is already quite divided) to eliminate these established, popular, robust, and regulated medical-cannabis programs, would be monumental, if not impossible. Put simply, it will not happen. This is especially true since momentum in the US is behind the eventual full legalization of cannabis, as is already the case in Canada and may soon be the case in Mexico.[49]

VI. Conclusion

In summary, as technology advances and Member States move away from ineffective prohibitionist policies, INCB has an important role in guiding Member States into a new era of science-based recommendations that will help local farmers, small nations, and ailing patients prosper. We applaud the INCB for recognizing that "there are still issues to be ironed out, for instance with regards to status of CBD on what is industrial use on the scientific questions around cannabis and around the legal interpretation of the relevant articles of the convention."[50] As there are a number of provisions that must be resolved by INCB as it finalizes the guidelines through its recognized and important consultation process, it is promising that "[t]he board is committed to work with member states and resolve these issues one by one so we have a shared understanding on what is to be reported and how."[51]

[47] INCB, *2020 Report*, at 19.

[48] As of the drafting of this memorandum, Kansas, South Carolina and Nebraska are considering implementing fully regulated medical cannabis programs that would increase Senate representation from legalized states to 78.

[49] 18 states, two territories, and the District of Columbia have legalized small amounts of cannabis for non-medical, scientific, or industrial use. Additionally, as of the drafting of this memorandum, at least five States are working to pass, legislation legalizing adult-use cannabis programs.

[50] Id.

[51] Id.

As discussed above, to adequately resolve these material concerns in any finalized guidelines, such guidelines must: (1) not limit cannabis material to primarily pharmaceutical preparations; (2) refrain from defining hemp-CBD (including other elements/phytocannabinoids), which are not currently under the control of the Conventions; (3) acknowledge that Member States' have clear and unambiguous discretion to decide which medical-cannabis-based products are approved for medicinal purposes; (4) take into account that it is critical for medical cannabis patients and for the burgeoning international medical-cannabis industry that the finalized guidelines are realistic and inclusive to those Member States already implementing successful, responsible, and regulated medical cannabis programs; and (5) harmonize international obligations, by developing such guidelines in close collaboration with the WHO, Member States, civil society, patients groups, representative of traditional small growers, and industry participants.