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Commentary on Hall (2017): Canada, cannabis legalization and uncertainty around the UN drug control conventions

Moves in Canada to legalize cannabis for recreational purposes necessitates careful consideration of the options available for reconciling domestic policy shifts with international legal commitments under the United Nations drug control conventions.

Hall makes a timely and valuable contribution to the growing debate and accompanying literature concerning the prospects for the United Nations (UN) based international drug control system and prohibition-oriented state policies operating beneath it [1]. This commentary seeks to develop some aspects of Hall's discussion of treaty reform, particularly in relation to the options available to the government of Canada as it moves to implement legislation legalizing cannabis for recreational use in July 2018.

Hall is right to say that the future of the three UN drug control treaties is 'now uncertain because of decisions by Uruguay, eight US states, and Canada to legalize cannabis use.' It is fair to argue that what has usefully been called the global drug prohibition regime [2] built around these multilateral conventions is currently in an unparalleled period of uncertainty and crisis [3]. That said, readers should not come away with the impression that officials in Montevideo and Washington D.C. have chosen simply to disregard the treaties and provisions concerning the prohibition of cannabis for anything other than medical and scientific purposes. Rather, both Uruguay and the federal US government—albeit from very different premises—have considered carefully how to justify domestic policy shifts in light of their international legal commitments [4]. Despite the challenges faced, the regime retains remarkable compliance-pull [5]. With Canada currently on track to confront the drug treaty questions already being faced by its southern neighbours, it is useful to explore some of the choices available to the Trudeau administration. This is particularly so since the country's position as a G7 and Commonwealth state implementing regulated cannabis markets at a national level is likely to set a precedent for any other states considering legalization of the drug for recreational purposes.

As Hall discusses, the current dynamics within the multilateral system means that any formal revision of the treaties requiring consensus or a majority vote in a UN body is unlikely; certainly for the foreseeable future. However, there appear to be more legally grounded routes to pursue than the 'untidy legal justifications' [4] put forward by the US and Uruguay. This is particularly so regarding the US argument that the treaties are sufficiently flexible to permit regulated markets for the recreational use of cannabis; an approach that is potentially damaging to not only the pursuit of rights based drug policy, but also international law more broadly [6, 7, 8, 9]. The flexibility argument may seem politically attractive in the short term. Yet, an approach deemed in contravention of the treaties by serious legal analysis [10, 11] would appear to be deeply problematic for a country like Canada that cherishes its reputation for upholding international law.

Emerging analysis suggests that a range of alternatives merit careful consideration in Ottawa [12,13]. Beyond simply withdrawing from the drug treaties, these options include the possibility of denouncing and then re-acceding with reservations. This procedure, as Hall points out, was successfully used by Bolivia regarding the coca leaf in 2013. Legal scholarship suggests that increased application in a range of international fields might see the mechanism become more common for states to 'unilaterally modify their treaty obligations' [14], although the unique circumstances of the Bolivian case arguably warn against drawing direct parallels. Another option, and one not considered in the article, is modification of certain treaty provisions by means of a

special agreement among a group of like-minded countries. Among others, such an 'inter se' approach would have the benefit of not only providing safety in numbers in the face of certain criticism from the status quo oriented members of the regime, but also allow for international trade between regulating jurisdictions and the incorporation of traditional cannabis producing countries within an emerging legal market.

Clearly, political as well as legal calculations will have to be made. Nonetheless, despite some alarmist commentaries concerning the need for Canada to withdraw from the conventions before implementing its domestic legislation [15, 16, 17], it seems that a sensible approach should involve unhurried reflection on all the options and decision-making that considers events elsewhere. The Canadian policy shift is not, after all, taking place within a vacuum. As well as substantive discussion of cannabis legalization in other states, including in Europe at the local level [18], the World Health Organization has initiated a review of the classification of cannabis under the drug conventions [19]. Within such a fluid, and uncertain, environment, and with due regard for international law, it seems as if a temporary period of what might be called respectful non-compliance [12] is an appropriate way forward.

Declaration of interests

None

Keywords: cannabis, Canada, legalization, UN drug control treaties, international law, modification 'inter se', respectful non-compliance

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