



Advocacy for Human Rights in the Americas

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OPENING STATEMENT

before the

Standing Senate Committee on Foreign Affairs and International Trade

Meeting regarding Bill C-45 as it relates to Canada's international obligations

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Madam Chair, honorable Senators, I thank you for inviting me to participate in today's meeting. I hope that my participation proves valuable as the Committee prepares its report.

As you consider the international dimensions of Bill C-45 and the regulation of cannabis, I've been asked to speak about Uruguay—the only country thus far to have legalized and regulated non-medical cannabis under national law—and in particular about the possible implications for Canada in light of Uruguay's experience.

At the outset, let me be clear about our perspective at WOLA—a leading research and advocacy organization advancing human rights in the Americas. Generally speaking, we believe the aim of drug policy should be to minimize the harms that can arise from drug use, but also to minimize the damage that is caused by drug control itself.

We consider the legal regulation of cannabis to be a sensible and promising alternative to prohibition, and we have engaged extensively in recent years with governments, multilateral agencies, and civil society partners exploring how to move forward with cannabis regulation in ways that support human rights, public health, and social justice.

I have been privileged to follow closely the implementation of Uruguay's cannabis law, from the original proposal in 2012 and its enactment in 2013, up to the present day.

Last month, WOLA and our colleagues at the Brookings Institution published a report entitled "[Uruguay's cannabis law: pioneering a new paradigm](#)," which takes stock of the law's advances and challenges to date.

I will touch on some of the topics covered in the report—especially Uruguay's handling of the UN drug control treaty questions as well as the problems that Uruguay faces with regard to banking. I would request that the entire report be made available to the Committee.

In view of the drug treaty questions and the banking issues, it also makes sense to take note of developments in your neighbor to the south—the United States of America—so I will address that evolving situation as well.

Overall, my message to the Committee today is one of reassurance. I believe that:

- Canada has sound reasons for moving forward now with its cannabis law reform—for the health, security, and well-being of Canadians—even though doing so will inevitably entail non-compliance with certain drug treaty obligations.
- The drug treaty non-compliance that Canada's shift will entail has remedies in international law. Canada has options to bring its impending new domestic legal reality into alignment with its international obligations. And Canada's international reputation as a good global citizen need not suffer along the way; to the contrary. My colleague Martin Jelsma of the Transnational Institute will discuss the options available to Canada, in particular the procedure of *inter se* treaty modification.
- Canada can avoid the kinds of banking access problems now facing Uruguay, and can even provide a model for Uruguay and others as to how to afford crucial banking services to the regulated cannabis sector, thereby contributing to the regulatory aims of transparency, accountability, and public safety.
- Time is on Canada's side. To be sure, Canada is at the vanguard of cannabis regulation, but it is not alone. In addition to Uruguay and to developments within the United States, other countries are contemplating similar reforms for similar reasons. To take just one example, the new Dutch government has announced that it will be permitting local experiments in regulated cannabis production to supply the country's cannabis "coffee shops." As Canada moves forward with cannabis regulation, it will find itself in good company.

To substantiate my overall message of reassurance, I will elaborate briefly on three points.

- Uruguay enjoys continued good standing in the international community.
- Canada can avoid the banking problems that have hampered Uruguay.
- The United States itself is shifting towards regulating cannabis.

Uruguay enjoys continued good standing in the international community.

More than four years after having enacted its cannabis regulation law, Uruguay is not an international outcast, and has not suffered sanctions or otherwise been punished for moving ahead with its reform.

First, Uruguay foresaw the criticism that its unprecedented move would likely trigger, and fashioned an argument based on human rights obligations that was at once consistent with the country's international reputation and coherent with the rationale for its reform.

Uruguay maintains that its policy is fully in line with the original objectives that the UN drug control treaties emphasized but have subsequently failed to achieve: namely, protecting the health and welfare of humankind.

There is no doubt that Uruguay is contravening its obligations under the 1961 Single Convention to limit cannabis exclusively to medical and scientific purposes. But Uruguay has side stepped the non-compliance question, arguing that its new law adheres to the country's foundational obligations under international law. In the event of a conflict between human rights obligations and drug control requirements, Uruguay argues that it is bound to give priority to its human rights obligations.

Second, the UN drug control treaty bodies, such as the International Narcotics Control Board (or INC), do not have the enforcement authority or political power to block Uruguay from moving ahead with its new law. Historically, countries such as the United States have wielded their considerable power to encourage full implementation of the drug treaties, and to discourage innovations that break from the orthodoxy of prohibition and criminalization. However, with Uruguay's cannabis law entering its fifth year, there has not been a concerted U.S. effort to punish Uruguay, either bilaterally or in the wider international arena.

In this respect, Uruguay has enjoyed felicitous timing, with its law's passage having come in the midst of a major shift toward cannabis regulation within the United States itself. After the November 2012 ballot initiatives to legalize non-medical cannabis in the states of Colorado and Washington, President Obama adopted a policy of conditional accommodation of state-level legalization, spelled out in a 2013 Justice Department enforcement guidance known as the "Cole Memo." This accommodation by the U.S. federal government provided Uruguay a political cushion internationally, just as the Uruguayan parliament was preparing to approve the country's cannabis reform.

Uruguay's human rights rationale for adopting a regulatory approach to cannabis provides a powerful case for moving ahead, even though regulation entails breaching certain drug treaty obligations. However, the human rights arguments for regulation do not automatically resolve the legal conflict with the current treaties or somehow erase the issue of non-compliance.

Uruguay was understandably reluctant to take the step of openly acknowledging treaty non-compliance entirely on its own, potentially isolated and without obvious allies. Rather, Uruguay judged that it would

be better to reckon with that challenge in the international arena once other countries found themselves confronting the same problem—as Canada is today and as other countries will likely be in the not-too-distant future.

So while human rights-based arguments and appeals to the fundamental health and welfare goals of the drug treaties do not resolve the issue of treaty non-compliance, such arguments do provide a strong justification for a country to enter into a temporary period of drug treaty non-compliance, with the intention of formally altering its relationship to the international obligations that it has decided it can no longer meet.

As Martin Jelsma will describe, such a period of transitional “respectful non-compliance” could set the stage for two or more States to avail themselves of the *inter se* option for treaty modification, concluding agreements among themselves that permit the production, trade, and consumption of cannabis for non-medical and non-scientific purposes.

Canada can avoid the banking problems that have hampered Uruguay.

Just as Uruguay had successfully launched commercial sales of regulated cannabis last July, a significant obstacle arose. Pharmacies making cannabis sales were told by their banks to either stop selling cannabis or see their bank accounts closed. Some pharmacy owners opted to continue selling cannabis on a cash basis, others withdrew, and still others who might have been considering entering the market put those plans on ice.

For Uruguay, the problem arose from the reluctance of large U.S.-based banks that have relationships with Uruguayan counterparts to risk running afoul of the USA PATRIOT Act, which precludes banks from serving accounts that involve cannabis. To date, these large U.S. banks, such as Bank of America, have shied away from servicing even U.S. domestic markets for medical or non-medical cannabis.

But where Uruguay was highly vulnerable given its relatively small economy and significant reliance on U.S.-based banks, Canada has attributes that should help avoid the obstacles that Uruguay is still struggling to overcome. First, Canada already has experience with the medical cannabis sector, something Uruguay is only now developing. Second, Canada’s overall population (10 x), economy (30 x), and cannabis markets are orders of magnitude larger than Uruguay’s, and the incentives for the country’s banks to participate in the legal cannabis sector are commensurately larger.

To be sure, Canada may also experience bumps along the road in terms of financial services. But indications are already clear that at least some of Canada’s large institutions intend to engage, and they are presumably conducting the due-diligence necessary to do so, in particular as it relates to their relationships with U.S.-based banks.

The United States itself is shifting towards regulating cannabis.

It may not be obvious, given the hostile views on cannabis held by the current U.S. Attorney General, Jeff Sessions. But the United States is also headed in the direction of cannabis legalization, or more specifically, federal law allowing for and setting guidelines around state-level legal regulation.

An agreement was reported last week between President Trump and Senator Gardner of Colorado to develop legislation to protect states that legalize medical or non-medical cannabis from federal intervention. The debate at the federal level is still far from settled, and there is still quite a ways to go before any such law is enacted.

But even if Trump should change his mind and hand the reins of cannabis policy back to Attorney General Sessions—who in January 2018 rescinded the aforementioned Cole memo—the states that have already legalized should not be expected to reverse course, and more states are likely to join them in the months and years to come.

The path toward eventual congressional passage of legislation that codifies the states' ability to regulate cannabis will not be a straight line. But already 1 in 5 Americans lives in a state that has voted to legalize, more ballot initiatives are on the way, and public opinion is increasingly in favor of legalization—which has appeal across the political and ideological spectrum.

The Canada-U.S. relationship is obviously enormously important for both countries. On cannabis regulation, the Canadian government is certainly ahead of the U.S. federal government. But without putting a timeline on it, the United States is heading in a similar direction, and in the future Canada should anticipate that the United States is more likely to be a partner in addressing shared concerns on cannabis policy, rather than an antagonist.