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URUGUAY'S ADVANCES IN DRUG POLICY

Milton Romani Gerner

- *One of the leading figures of Uruguay's drug policy presents the reasons for and challenges of reforming the country's laws.*

ABSTRACT

In December 2013, the government of Uruguay passed Law 19.172, which allows marijuana to be produced and sold in the country. The law is the result of the government's commitment to a comprehensive drug policy with a human rights and public health-based approach. Based on the author's experience, the article presents an overview of this policy in Uruguay.

KEYWORDS

Human rights | Uruguay | Drug policies | Public health | Regulated markets

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Uruguay is making news around the world for its decision to make the regulation – as opposed to strict prohibition and criminalization - of the cannabis market an integral part of its social policies. This decision is consistent with its broader drug policy, which is focused on human rights and public health and aims to strengthen the gender perspective. It is being proved and demonstrated that public health and rights-based approaches are more effective and humane than prohibitionist and punitive ones.

A consensus is forming on the international level that “the war on drugs” has not been successful, has increased violence and has ultimately caused more harm than the drugs it seeks to combat. The Summit of the Americas held in December 2012 in Cartagena de Indias gave the Organization of American States (OAS) the mandate to produce a report on drugs in the Americas. That report was presented by the Secretary General at the 43rd General Assembly of the OAS in Antigua, Guatemala and represents a fundamental step in progressing necessary debate about this issue in both the Americas and the world.

Over the past decade, Uruguay has defended a rights-based approach to drug policy in various international organisations and forums and especially as a Member State of the United Nations Commission on Narcotic Drugs (CND). We reiterated our position in our March 2015 intervention during the 58th session of the CND held in Vienna, Austria particularly in response to the unfounded accusations made by the then president of the International Narcotics Control Board (INCB).

In 2008, Uruguay became a full member of this CND. Composed of 52 countries, the CND is the political body that guides drug policies at the global level. That year, we promoted a draft declaration cosponsored by Argentina, Bolivia,

Switzerland and the European Union on the “effective integration of human rights instruments into drug control policies” (Resolution 51/12¹). The political and diplomatic battle we waged at that time was of great importance, and our proposal was heavily debated.

Today, we are part of a very active Latin America bloc that acts together at the OAS, CELAC, MERCOSUR and UNASUR,² and which is calling on the international community to engage in an open and frank debate, that is all inclusive and without taboos, and which incorporates all views, supports diversity and unity of action, and integrates a health and social inclusion perspective into new approaches. The United Nations General Assembly Special Session, to be held in New York in April 2016 (UNGASS 2016), is currently drawing a great deal of attention. It will undoubtedly provide an opportunity for all UN agencies to contribute their point of view, and states and civil society will have the opportunity to discuss new approaches and potentially open the door to humanising drug policies.

Indeed, there is currently a global movement demanding such change. Uruguay is no stranger to it. On the contrary, in defending its sovereign right to make its own decisions, Uruguay is an example of a comprehensive and committed rights based approach in the area of drugs. Human rights violations committed in the name of the war on drugs are an issue that cannot be avoided. The only thing criminalisation of possession for personal use has produced is overcrowded prisons where conditions see the right to health of those detained, and who suffer from addiction, violated. The international community must ensure proportionality between sentences imposed for the use of drugs, and the harm caused by them. The death penalty should be abolished, especially for drug-related crimes. A debate with all of the relevant agencies – WHO, UNDP, High Commissioner for Human Rights, ILO³ – is needed in order to have a broad vision and not a narrow one that limits action.

Uruguay is a pioneer in the regulation of the cannabis market, but experience in this area is also rapidly developing in other countries, states and cities. This development is founded on the belief that the current legal and regulatory framework - characterised by prohibition and criminal sanction – has perverse consequences and causes harm, forcing consumers to resort to the illicit market.

It is worth recalling that it was in 2006 that Uruguay began to move towards a different strategy focused on the regulation of the tobacco, cannabis and alcohol markets.

Strategic thinking about regulating markets exists well beyond drug control, yet it is in the area of substance control that a regulation approach is even more justified. The regulation of such markets constitutes a more efficient control system that respects human rights, protects public health and brings the state closer to vulnerable populations and problematic drug users.

Bolivia has experience in regulating the market of coca leaf production and the use of consensual drug eradication as efficient methods that are also consistent with human rights. The development of alternative crops in various countries in our region of South America is another way of curtailing the illegal market while using agricultural products to compete with it. This demonstrates it is a matter of intervening and regulating markets.

In 2006, during Dr. Tabaré Vázquez's first term in office as president, Uruguay led in the implementation of the Framework Convention on Tobacco Control and made progress in the regulation of tobacco. The benefits in terms of the decrease in consumption of the substance for the population's health clearly illustrate the virtues of the approach. We are also committed to acting decisively in order to regulate the production, distribution and sale of alcoholic beverages. Our focus is on reducing harm and sharing risk construction-management, once again using a public health and rights-based approach.

In May 2014 the José Mujica administration signed Law no. 19.172 which regulates the production, distribution and sale of cannabis, and sought to make advances in its regulation and implementation. Other regulatory decrees on hemp production and the use of cannabis for medical purposes have since been issued.

Laboratories have already been set up to create and produce mechanisms to ensure traceability of products and to prevent their diversion into illegal markets. The Institute for the Regulation and Control of Cannabis (*Instituto de Regulación y Control del Cannabis, IRCCA*) has also been created. It is in charge of producing guidelines and exclusively controls the mandatory registration of home-growers and membership clubs.

Necessary steps are also currently being taken to award licences to the companies that will produce cannabis on state land and which will then distribute it to pharmacies. A special software is being designed to record users, which will respect identity and sensitive data.

A Scientific Advisory Committee made up of notable and distinguished scholars and former deans from various faculties has been formed and has begun to operate. It has organised a network of 119 national and international experts who are monitoring and evaluating the implementation of the law and the regulatory model. This group of experts is open to all those who are interested in following this initiative.

As we have invested the country's international reputation in this system, Uruguay remains determined to advance the implementation of the regulated cannabis market decisively, on schedule but without undue haste, and also with the guarantee of its efficiency.

We wish to be clear that we do not aim to serve as a model for everyone. This is a Uruguayan experience and we will assess its achievements in due course. However, we do reiterate our sovereign right to adopt this new approach, albeit that it is an approach that differs from the global model that has prevailed over the past few decades: a model that has only seen illegal activity and consumption increase exponentially.

Drug control conventions and policy guidelines must be at the service of integrated, sustained, just and equitable human development. This is the paradigm that governs the new global strategy.

Drug control conventions, the Single Convention on Narcotic Drugs (1961), the Convention on Psychotropic Substances (1971) and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) are not to be interpreted strictly. In fact, there are several flexible interpretations. Some adopt a more repressive interpretation, such as those who apply the death penalty to even minor drug-related offences. A more humane interpretation is possible and which is consistent with international human rights law: a legal framework which is just as important as the conventions themselves.

The purpose and spirit of the conventions, emphatically confirmed in their preambles, is to contribute to the health and well-being of mankind. Of course, they were designed to also guarantee the medicinal and scientific use of controlled substances and to combat the illegal trafficking of narcotics and organised crime. New examples of regulated markets are the result of sovereign decisions of states based on their own domestic laws. They pursue the same goals as the conventions and are consistent with international human rights obligations. They represent new approaches that must be incorporated into the international debate being conducted by all those who work in the broad and complex phenomenon of drugs.

NOTES

1. UNODC, Commission on Narcotic Drugs, Resolution 51/12, "Strengthening cooperation between the United Nations Office on Drugs and Crime and other United Nations entities for the promotion of human rights in the implementation of the international drug control treaties," 2008, accessed June 30, 2015, https://www.unodc.org/documents/commissions/CND/Drug_Resolutions/2000-2009/2008/CND_Res-2008-12e.pdf.
2. The Organisation of American States, the Community of Latin American and Caribbean States; the Common Market of the South and the Union of South American States, respectively.
3. The World Health Organisation, the United Nations Development Program, the High Commissioner for Human Rights and the International Labour Organisation respectively.

**MILTON ROMANI GERNER - Uruguay**

Milton Romani Gerner has a degree in psychology. He was a professor of psychopathology and at the APEX Cerro extension programme at the University of the Republic (Uruguay). He is a political activist with the Frente Amplio and member of the Frente Amplio's Commission on National Defence. Romani lived in exile in Argentina, is a human rights activist and a collaborator of Center for Legal and Social Studies (CELS). He was Uruguay's ambassador-at-large on drugs and human rights and ambassador to the OAS between 2012 and 2014. He is the secretary general of Uruguay's National Drugs Board (2005, 2011, 2015).

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