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A human rights approach to psychoactive drugs

I feel very honoured and humbled to be asked to speak at a centre named after Ron Castan. What an extraordinary legacy and inspiration Ron Castan left behind. I hope that my talk today about drug policy would be consistent with his contempt for prejudices and his stalwart commitment to the protection of human rights.

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I am going to discuss the:

- **History global drug prohibition**
- **The current system**
- **Developments**
- **Recognition of the failure of the WoDs**
- **Principles of drug law reform**
- **Human rights central reform**

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The global prohibition of drugs began slowly in the early 20th Century. Some were inspired to start thinking about global drug prohibition when the international movement to abolish slavery finally achieved its goals in the early 19th Century. The drug prohibition movement gained further impetus because of Britain's role in forcing China to take Indian opium. This process started with the East India Company in the 1730s but accelerated after the British began establishing a colony in India. At that time, as now, China had a massive trade surplus with the rest of the world, including India and the United Kingdom. Indian opium helped to reduce this trade deficit and also paid for up to quarter of the costs of the British colony in India. American Christian missionaries in China began reporting back home about the cruelties of Britain's opium policies in China, including the two opium wars of the 19th Century. This led to the USA convening the Shanghai Opium Commission attended by 13 countries on 26 February 2009. The Shanghai meeting led to the first international drug control treaty, negotiated at the International Opium Convention of the Hague in 1912 and the critical 1925 Geneva Opium Conventions which were held under the aegis of the League of Nations and included cannabis for the first time. The Geneva Conventions proposed that drugs should be used only for medical and scientific purposes and that there should be stringent controls on drug production at the source.

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After the end of World War II, drug prohibition became established as part of the United Nations system with three international treaties and an array of organisations responsible for the development, implementation and monitoring of drug policy. This year is the 50th anniversary of the Single Convention, the first of the three UN drug treaties, and referred to by this name because all of the drug treaties agreed under the League of Nations were included in this 'single' UN treaty. It is important to remind ourselves that the UN was founded on the ashes of the Second World War to

achieve three crucial objectives: assist economic development, ensure national security and protect human rights. The UN has also been strongly committed to global drug prohibition but this is a lesser commitment than that given to the three paramount objectives.

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The Declaration on 17 June 1971 of a War Against Drugs by President Nixon was very effective politically but failed comprehensively as a policy. It helped Nixon win a landslide victory securing 49 of the 50 states in the 1972 Presidential election despite the liability of waging a deeply unpopular war in Vietnam. Politicians in many other countries noted the effectiveness of this strategy and emulated this approach in their own domestic political battles. In 1981, a new epidemic was recognised, later termed 'AIDS', and subsequently found to be due to an infection with a virus which came to be called 'HIV. Within a few years the critical role in most regions of the world of HIV spreading among and from people who inject drugs was recognised and this slowly prompted a reconsideration of the costs and benefits of a drug policy heavily reliant on law enforcement. In the last two decades it has become clear to many that drug consumption and problems increased the more global drug prohibition was intensified.

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Many politicians have known for some time that drug prohibition did not work and could not work. The Parliamentary Joint Committee National Crime Authority declared in 1989 that:

*'Over the past two decades in Australia we have devoted increased resources to drug law enforcement, we have increased the penalties for drug trafficking and we have accepted increasing inroads on our civil liberties as part of the battle to curb the drug trade. **All the evidence shows, however, not only that our law enforcement agencies have not succeeded in preventing the supply of illegal drugs to Australian markets but that it is unrealistic to expect them to do so.***

Note that the cost to human rights of relying heavily on drug law enforcement was apparent in 1989. Despite making this unambiguous statement, the members of this committee continued to defend drug prohibition whenever necessary.

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Former US Secretary of State, George Shultz said at a private meeting in 1989 when he did not know that his comments were being recorded:

'It seems to me we're not really going to get anywhere until we can take the criminality out of the drug business and the incentives for criminality out of it.... We need at least to consider and examine forms of controlled legalization of drugs.'

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Every few days now somewhere in the world a police Commissioner or senior political leader admits that the war on drugs has failed. Political elites have known this for years. On 2 June 2011, 19 stellar

international figures of the Global Commission on Drug Policy announced this in New York. This group included a former UN Secretary General, Kofi Anan, a former US Secretary of State, George Shultz, a former Chairman of the US Federal Reserve, Paul Volker, the Prime Minister of Greece, the former Presidents of Brazil, Colombia, Mexico and Switzerland and Sir Richard Branson. The war on drugs has failed comprehensively, completely, totally and utterly.

Drug use has increased under prohibition. In the first half of the 20th Century, illicit drugs were only a problem in one country, the USA. Illicit drugs became a problem in almost every country in the world in the last half century - since the UN established a system of global drug prohibition. According to UN estimates, between 1998 and 2008 the number of people worldwide using heroin increased by 35%, the number using cocaine increased by 27%, and the number using cannabis increased by 9%. In 1998, the UNODC declared 'a drug free world, we can do it!' In the next decade global heroin production more than doubled and global cocaine production increased by 20%. Prohibition supporters argue that drug use will increase after legalization - but drug use has grown steadily under prohibition: more production, more consumption and an ever increasing variety of new drugs.

Drugs have also become much cheaper under prohibition. Although drug law enforcement is supposed to make drugs more expensive, global prices of heroin and cocaine have fallen by about 80% in the last 25 years.

Nor has prohibition kept communities safe. 91% of all research studies evaluating the relationship between drug law enforcement and violence have concluded that the more intensively drug law enforcement was implemented, the more severe the violence. Since Mexico started a War on Drugs in 2006, almost 40,000 have been killed in the resulting violence.

Prohibition has seriously undermined the human rights of people who use drugs. It has reduced their freedom of association. It has reduced their right to the same health care as other members of the community. It has often resulted in cruel and unusual punishments including capital punishment. Prohibition has undermined the rule of law. In the USA, when drug cases are decided in ways that are inconsistent with national frameworks, as they often are, this is referred to as the 'drug exception' to the Bill of Rights or the Constitution. The great Jonathan Mann taught us in the early years of the HIV epidemic that the protection of human rights was the alpha and omega of any effective response to HIV. It has taken us almost three decades to appreciate the wisdom of his insight.

Prohibition has not kept us healthy. Heroin overdose deaths were virtually unknown in Australia before the Commonwealth prohibited heroin in 1953. There were 6 drug overdose deaths in Australia in 1964, over 1100 in 1999 and about 400 every year of this century. Prohibition made more difficult the task of reducing HIV among people who inject drugs. Supporters of drug prohibition fought strenuously against needle syringe programmes and methadone treatment even though these very effectively reduce HIV infections.

Prohibition has not made drugs hard to get. In an officially commissioned survey in 2009, 87% of a sample of Australian drug users reported that heroin was 'easy' or 'very easy' to obtain with similar proportions for cocaine, amphetamine and cannabis. Is this a good return on the billions of our tax dollars spent every year on drug law enforcement?

Prohibition pushes people into the arms of criminals and organised crime. Many people who use illicit drugs commit no other crimes. Yet they often end up buying drugs from violent criminals. Why push otherwise law abiding citizens into the arms of criminals and organised crime?

Prohibition has been an expensive way of making a bad problem much worse. These days governments cannot afford to continue raining gold bars down on customs, police, courts and prisons. The results of this generous funding have been continuing high levels of deaths, disease, crime and corruption. Meanwhile drug treatment and social measures, which could make a real difference, are starved of funds. If the purpose of prohibition has been to make toxic substances readily available to anyone who wants them in a flourishing market economy controlled by violent organised crime, then current policy has been a roaring success.

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Not only has drug prohibition failed, it can never work. Supporters of a criminal justice approach to illicit drugs are unable to answer these questions. **First**, if we cannot keep drugs out of our prisons, how can we keep drugs out of Kings Cross? **Second**, given the spectacular failure of alcohol prohibition in the USA, why would anyone expect prohibition of drugs to be any different? **Third**, if a kilogram of heroin costs \$1,000 in Bangkok and \$300,000 in Kings Cross, how can that kilogram of heroin be stopped from reaching Kings Cross? **Fourth**, if prohibition is such a good idea for the drugs responsible for 3% of drug-related deaths, why then not extend prohibition to the drugs responsible for 97% of drug-related deaths – alcohol and tobacco?

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We can respond effectively to drugs by aiming primarily to minimise the harms caused by drugs while also aiming to minimize the harms and costs of our responses to drugs. This means that attempting to reduce drug consumption should not be the objective though it can still be the means to the end of trying to reduce harm.

Black markets for drugs are pernicious and cause many of the harms we call ‘drug problems’. These black markets will never be eradicated completely. But drug law reform is likely to shrink these black markets substantially by removing the oxygen of lucrative profits. While prohibition continues, the huge drug black markets will continue to thrive.

To get better outcomes, drugs will have to be handled primarily as a health and social problem, and with funding for health and social measures increased to the sorts of levels now enjoyed by drug law enforcement.

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Let us think how cannabis might be managed after drug prohibition.

First, cannabis must be taxed and regulated, with health warning labels on packets, information on the label for people seeking help stopping or cutting down, cannabis advertising and donations to political parties banned, proof of age greater than 18 years required before sales, and consumer information provided - including the concentration of THC. Hard-to-get and easy-to-lose licenses should be required at the cultivation, wholesale and retail stages. When cannabis is provided by

criminals, as happens now with cannabis prohibited but strong demand persisting - cannabis consumers don't pay any tax, don't get health warnings, don't get help seeking information, don't get consumer information, don't have a clue how strong the cannabis is, and there are no restrictions on sales to young people or pregnant women.

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How is cannabis managed now?

It is provided by criminals and corrupt police. Dealers also supply other illicit drugs such as heroin or cocaine. Consumers pay no tax. There are no health warnings. No help seeking information is provided. There is no consumer information and there are no restrictions on sales such as to minors or pregnant women.

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People dependent on currently illicit drugs should be treated like people dependent on alcohol and nicotine - as patients not as criminals. When simple and inexpensive treatments have been provided to someone with a severe drug problem and none have helped, treatment with a suitable substitution drug should be considered: just as methadone treatment is offered to people with heroin dependence or nicotine replacements are provided to smokers trying to quit. Treatments provided should have good evidence of effectiveness, safety and cost effectiveness. A small proportion of severely dependent consumers accounts for a substantial proportion of the drugs used in a community. Attracting and retaining this group in treatment benefits these individuals, their families and community. Treatment also reduces the number of new users.

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There may be a case for considering the commercial sale of small quantities of low concentration preparations of carefully selected drugs if the above changes do not produce enough benefit. Demand for what are currently classified as illicit drugs is likely to shrink substantially once the other elements of the package I outlined have been implemented. Until 1906, edible opium was taxed and regulated in Australia and was sold in grocery shops. Coca Cola contained cocaine in the USA until 1903. So we shouldn't be talking about **legalising** drugs but rather about **re-legalising** drugs.

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One kilogram blocks of 100% pure heroin or cocaine should never be sold from supermarket check-out counters. I am confident that will never happen. It should never happen. For those for whom English is a second or third language. I have tried to make this clear on this slide.

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Heroin assisted treatment is now available in 5 countries. This means high dose heroin dispensed daily to patients who inject themselves in a clinic and also receive considerable psychosocial assistance. For that small minority with very severe problems for whom nothing else works, heroin assisted treatment has proven to be very effective, safe and cost effective. Street heroin causes major problems for drug users, their family and community. Yet legal, regulated heroin in the form of

heroin assisted treatment provides huge benefits for users, their families and communities. Doesn't this demonstrate exactly why we should be legalizing drugs?

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We will never make progress with illicit drugs while we keep ignoring the basic law of supply and demand.

The fall of the Berlin wall reminded us all of the high costs of ignoring basic economics.

Decriminalisation is not as bad as prohibition but still leaves us with all the problems of a huge black market. The only way we can minimize the pernicious black market is by enabling the immovable mountain of politics to accommodate the irresistible forces of economics. When politics and economics clash, as they often do, politics usually triumphs in the short term but economics usually triumphs in the long term

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But attitudes to drug prohibition and drug law reform are now beginning to change. In 2009, UN Secretary General Ban Ki-Moon said:

In addition to criminalizing HIV transmission, many countries impose criminal sanctions for same-sex sex, commercial sex and drug injection. Such laws constitute major barriers to reaching key populations with HIV services. Those behaviours should be decriminalized, and people addicted to drugs should receive health services for the treatment of their addiction.

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Stein's law says that 'things that cannot go on forever, don't'. Here we see responses to the annual Gallup poll in the USA on the question 'do you think that the use of marijuana should be made legal or not?' In 1969, opponents outnumbered supporters by 72%. The gap shrank to 24% in 2006 but in 2010 the gap was only 4%. Soon the lines will cross and US national supporters of marijuana legalization will be in the majority.

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The times are indeed changing. On 2 November 2010, 46% of voters in California in the mid-term Congressional elections supported Proposition 19 – which called for the taxation and regulation of cannabis. The 'Yes' voters were younger than the 'No' voters. A similar question is likely to be put to the voters in California again in November 2012. Only 2% more votes will mean that the Proposition will be passed in the most populous and most influential state in the Union.

The press conference of the Global Commission on Drug Policy in New York on 2 June 2011 had a huge impact around the world. The Commissioners said that drug prohibition had failed and it was time to consider other options.

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What can we conclude from all of this? Psychoactive drugs are part of all cultures. Communities fear new drugs and often impose bans. Prohibitions on newly introduced drugs are often popular initially. After half a century of the Single convention and 40 years after Nixon declared a war on drugs, it is clear that drug prohibition has failed and is futile. Decriminalisation not as bad as prohibition, but still leaves us with all the problems of a black market. Many countries are now changing their approach. Half a dozen countries in Europe and a similar number in South America have changed their approach. More will follow.

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Jonathan Mann in the 1980s put human rights at the centre of HIV control. It has taken some time for that prescient message to sink in. But it has now. Well and truly. Harm reduction now rests firmly on public health and human rights. The UN Commission on Narcotic Drugs and also the UN Human Rights Council have both within the last few years discussed for the first time the human rights of people who use drugs. The UN has established the Global Commission on HIV and the Law to identify ways in which the law impairs efforts to prevent HIV spread and the treatment and care of HIV infected people. There is a special focus on men who have sex with men, sex workers and people who use drugs. The Global Commission on Drug Policy has many links to the UN Global Commission on HIV and the Law. In Churchill's phrase it is the end of the beginning though not yet the beginning of the end. The gratifying part of all this is that the protection of human rights is now beginning to drive the reform process.

Thank you

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Abstract

The global prohibition of drugs began slowly in the early 20th Century. After the end of World War II, drug prohibition became established as part of the United Nations system with three international treaties and an array of organisations responsible for the development, implementation and monitoring of drug policy. The Declaration of a War Against Drugs by President Nixon was very effective politically but failed comprehensively as a policy. Politicians in many other countries emulated the political strategy that had worked so well in the USA. The recognition of the new epidemic of AIDS in 1981 and the critical role of HIV spread among and from people who inject drugs prompted a reconsideration of the costs and benefits of a drug policy heavily reliant on law enforcement. In the last two decades it has become clear to many that drug consumption and problems increased the more global drug prohibition was intensified. Severe unintended costs of an approach dominated by the criminal justice system have included flagrant violations of the human rights of people who use drugs and major difficulty controlling HIV among and from people who inject drugs. Public health practitioners recognised that HIV control was not possible without protecting the human rights of vulnerable groups at great risk of HIV: moreover these rights could not be safeguarded for people who use drugs without major drug law reform. In the last few years, support for major drug law reform has increased substantially in many countries. This process will take decades but offers many benefits including improved outcomes for public health and human rights.