Sixth International Human Rights Lecture – Ernesto Zedillo full speech transcription

“President Robinson, Madame Ambassador, dear friends, ladies and gentlemen I am very happy to come (to Ballina) with my wife Nilda - actually her name is Patricia.

I remember, with gratitude and emotion, when President Robinson visited my country and we went together to visit the monument where we Mexicans pay tribute to the Saint Patrick Battalion that sided with the Mexican army when we were defending our country from invaders. But, in any case I am honoured and grateful for having been asked by my sister and boss at the Elders, President Mary Robinson, to come before this wonderful audience, all of you, to deliver the Sixth International Human Rights Lecture of The Mary Robinson Centre.

In truth, mine will not be a lecture. Believe me, I would not dare to deliver one on the topic of human rights in front of one of the world’s champions on the subject, who happens to be none other than Mary. I'm just a lowly economist who used to work for the Mexican government in various capacities, and who shares President Robinson’s conviction and passion for the human rights cause she has worked for and advanced since she was a brilliant young lawyer.

On this, as on numerous other topics, Mary is who lectures me, not the other way around. What I intend to do today, is to submit some considerations about a matter that has worried me, and of course many others, over the years. The subject is the inconsistency that exists between, on the one hand, the generally accepted human rights principles and on the other, numerous precepts and practises embedded in both international and national laws. Such inconsistency can be outright explicit or subtly implicit but in both cases, represent a challenge and even a material threat to human rights in many places of the world.

It would be impossible for me to offer you a full catalogue of such inconsistencies, rather I will refer to two specific examples that are in my view paradigmatic of the problem, and that called distinct, and in one of those cases, more even radical solutions. One example at one extreme is about the tension that exists between, on the one hand, human rights ,and on the other covenants that are also seen as inalienable by all countries and peoples.

The problem then becomes how to reconcile in practise the validity of two sets of inalienable principles. My other example refers to a case in which some international conventions and national laws, as adopted, have had, as an unintended consequence, the systematic violation of human rights, along with other obvious effects. In this case, the supremacy of human rights must prevail and lead to a further revision and even elimination of the legal frameworks at the root of the problem.

Before going into the presentations of these two extreme examples, allow me to insist what I presume is unquestionable for you all and certainly for me - that human rights covenants must have supremacy in international and national laws, simply because they are essential to the dignity, freedom and welfare of all human beings.

Human rights principles as expressed in the Universal Declaration of Human Rights, are intended to be generally recognised and respected. Governments are legally obligated to uphold and protect the human rights of all individuals within their jurisdiction. The principles seek to ensure that human rights abuses are not tolerated and that those responsible for such abuses are held accountable. And yet, despite their purported supremacy in international law, human rights covenants are often violated, or simply ignore the right to life, liberty and security of person. The right to freedom of expression and association, and the prohibition of torture and other forms of ill treatment, to mention a few, are rights, that in many parts of the world, even in unexpected places, are systematically infringed by governments.

Frankly, notwithstanding their supremacy, there is impunity for the violation of human rights. Such impunity can stem ironically from the invocation of other covenants in international law, the most conspicuous of these being the principle of state sovereignty. This asserts that each state has the right to govern its own affairs without external interference. This implies that countries have the right to decide their own form of government, being democratic or non-democratic, and this of course is a very serious problem, because every time that we encounter one of these situations, it so happens that they become defensive and simply say “don't mess around with me because I'm a sovereign country in which I don't accept intervention in my internal affairs,” and that of course is a very serious problem.

In fact, the principle of state sovereignty and non-interference in the internal affairs of states is frequently argued to evade accountability for violations of human rights, and these issues stem from the United Nations charter, where sovereignty and non-intervention are principles that are accepted and considered of the highest value. Consequently, there can be instances, and fortunately not regularly, when the two important sets of principles are in tension with each other and even on a course of collision.

As much as people like President Robinson, myself, and probably all of you would like to see the supremacy of human rights principles being uncontested absolutely, we must admit that the principles of state sovereignty and non-interference are also universally seen as inalienable, and therefore impossible to set aside altogether, to remove any obstacle for the enforcement of the universal human rights. Instead, we must stay the course, follow over many years and keep promoting, strengthen political will and commitment from the part of governments and citizens, better public education and awareness, raising sustained advocacy and pressure from civil society and the international community, all of these with a view to achieving stronger international and national legal frameworks as well as the pertinent enforcement mechanisms.

Although the task to get there still looks immense, we must equally acknowledge and rely on the stepping stones that have been laid for us painstakingly since the adoption of the Universal Declaration (of Human Rights) in 1948. The list of these stepping stones is too long to be repeated here. It includes more than 100 instruments, comprising conventions, protocols, declarations, codes of conduct and formal standards. It suffices to mention a few of them, such as the International Covenant on Civil and Political Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Covenant on Economic Social and Cultural Rights, the International Convention on the Elimination of Full

Forms of Racial Discrimination, the Convention on the Political Rights of Women, the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practises Similar to Slavery, the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child.

Furthermore, there are institutions mandated to work towards the same end like the Human Rights Council - unfortunately paralysed sometimes by this regionally rotated membership that leads to see in the council rather bizarre participants - but crucially, the world counts with the Office of the United Nations High Commissioner for Human Rights - a position in which, as we all know, President Robinson served with enormous distinction. Another promising milestone has been the recognition by the United Nations General Assembly, although yet pending effective implementation, of the principle of the responsibility to protect, which asserts that the international community has a responsibility to intervene when a state is unable or unwilling to protect its own citizens from serious harm. As articulated, the concept recognises the importance of both human rights and state sovereignty and seeks to find a way to protect both.

It is my belief that as long as we do not tire to advocate and achieve stronger rules and institutions, the tension between, on the one hand the principles of human rights, and on the other those of sovereignty and non-intervention can be resolved progressively. I am much less sanguine, and to be honest, totally sceptical, that in my other example, the tension between universal human rights governance and the international regime in drugs control could be solved unless the latter regime is radically transformed. In a nutshell, for too long and with few exceptions, drug policies throughout the world have essentially relied on prohibition and law enforcement.

This approach is totally inconsistent, in my view and in the view of many people, with best knowledge from life sciences, sound public health research and economic analysis. From the latter perspective, which is my profession, prohibition of the production and consumption of any merchandise for which some demand exists, under any circumstance, anyways would lead invariably to the creation of a black market by individuals and organisations willing to violate the law.

By decreeing the illegality of the demand and supply of a substance, the State, rather than assuming its responsibility to regulate the market to protect people's health, actually engineers a business that ends up being developed and managed by the worst elements in societies - those willing to violate the law and preserve and expand their market power by means of violence, intimidation and corruption. Despite the robustness of this basic proposition, and not many other propositions from many other insignificant disciplines, prohibition with criminalisation is what most countries use to deal with the problem of production, distribution and consumption of narcotics.

This wrong headed approach is, we must admit, consistent with the Single Convention on Narcotic Drugs of 1961, as amended by a Protocol in 1972, The Convention on Psychotropic Substances of 1971 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. Together, these legal instruments, along with a set of

UN activities, constitute the United Nations International Drug Control Regime. In fact, this framework provides international legal cover to the so-called global war on drugs that has been going on for over a century, although in its contemporary form for a bit longer than 50 years.

The evidence is overwhelming. The global war on drugs has finished with devastating consequences for individuals and societies around the world. By any pertinent indicator, none of the objectives of the UN international drug regime has been achieved. Let us say clearly. Prohibition with criminalisation is an experiment that has failed brutally. It is not only that it has failed to control production and consumption of drugs, but that it has also had other tragic consequences for public health and human rights.

The global data confirming the failure of prohibition is sound and clear, but the disaster can be better manifested by looking at the experience of individual countries. Sadly, a most paradigmatic case happens to be the one of my own country, Mexico, which has modelled its drug policies after the UN Conventions and its collaboration with other countries, most significantly the United States. Despite incurring an incredibly big economic and human cost, Mexico has failed to control the production and traffic of drugs. Rather, the problem has worsened, and dramatically so since the response to the violence fueled by organised crime, the country's war on drugs was escalated in 2006.

Five years ago, I worked with some Mexican scholars to make a review of the war on drugs since such escalation started. Our findings, published in an academic journal, were shocking. Between 2006 and 2017, a quarter of a million homicides occurred in my country. Around 230,000 people were internally displaced, and over 35,000 people were disappeared. If we took stock today, of course those numbers would increase dramatically, because the situation has not changed at all. More than 30,000 homicides every year and similar numbers per year of people who have been displaced or disappear continue to happen. In turn, when we reviewed the evidence, we found no evidence that the strategy was working, no solution for the problem had been achieved at all, and yet, we had paid the enormous cost in reverse. By all accounts, the programme has got worse and not better. What we did find was a confirmation that the country's drug policies exist in violation of a number of rights well defined in our constitution for the Mexican people and for other residents of the country.

After the peer review and subsequent publication of our study, I decided that it would prove important to go and further explore the unconstitutionality of prohibition and criminalisation - the two pillars of the country's drug policies, and therefore proceeded to commission a deeper analysis of the subject. The work, produced by two remarkable legal scholars - women I should add for the joy of Mary (she thinks that every achievement of humanity in recent centuries and in many centuries to come should be credited to women, and I tend to agree to a significant extent with her), the work confirmed our earlier conclusion and actually extended it and deepened it.

These scholars anchored their argument on the fact that the first paragraph, the very first paragraph of the Mexican Constitution states - by virtue I should say of a 2011 reform - that the Constitution protects all human rights included in the Constitution, as well as those

contained in Treaties ratified by Mexico. Therefore the human rights included in ratified treaties now enjoy constitutional status. Additionally, the Mexican Supreme Court interpreted the new Constitutional provisions in a series of rulings issued between 2011 and 2015. In those rulings, the court emphasised that only treaties containing human rights norms enjoy Constitutional top status, consequently there should be no doubt that human rights do have Constitutional supremacy in the Mexican legal system.

With this principle in mind, our legal scholars examined the laws that mandate prohibition and its enforcement, and concluded - based I believe on very solid arguments, that Mexico's drug policies violate the right to health, the right to development of personality, the right to equality, as well as the right to life, personal integrity, personal freedom and security, due process, professional freedom, a healthy healthy environment, as well as the rights of indigenous communities. Furthermore, they submit that those policies also collide with the Constitutional provisions - they call it non-rights violations on market integrity and state management of the economy, federalism and the principles of legality and other standards associated with the preservation of the rule of law.

These scholars observed that the rights and non rights violation of our constitution by current drug policies reinforce one another, projecting an extraordinary amount of unconstitutional damage to the functioning of the whole system. Prohibition as the drug policy, in their view - that I fully share - violates constitutional rights, prevents individuals from pursuing legitimate life plans, permanently creates inequality and generates severe and massive damage to the life and health of individuals. Prohibition goes against the health of the Mexican people and disrupts the operation of the Mexican State, and clearly is compromising the most structural aspects of democracy and the rule of law in Mexico.

Prohibitionist drug policy may consequently be characterised as a systematic constitutional under-miner, creating many interconnected normative and practical problems in all social domains. This little perspective arrives to the same conclusion proposed by the Global Commission on Drug Policy - this is a commission established some years ago, of which I would say nowadays four Elders form part - President Cardoso, President Gaviria, President Santos and myself - and and we have arrived, after a lot of discussion and after having reviewed the evidence and produced many reports, we have concluded that governments should be with the drug problem by decriminalising consumption and regulating - I stress the word regulating - the supply of drugs by means of legal and institutional frameworks that abide by the universal principles of human rights and actively pursue ambitious public health objectives.

This reasonable proposition is also supported in my view by a proper interpretation of international law. When two international law systems clash, as is the case here, the human rights and the drug control system, international human rights law should prevail. The UN human rights norms must prevail over drug conventions, for the former derive directly from the UN charter itself, whereas international obligations regarding drop provision are not an expression of the State obligations under the charter. Moreover, one of the fundamental purposes of the UN is the promotion and protection of human rights, and this is not so for drug prohibition - it is about prohibition. Furthermore, many of the human rights norms are pertinently considered of the highest level in the hierarchy of norms of international law. To

conform to this conception, it follows that the current international regime on drug control should be reformed.

As an intermediate step, I am afraid that the United Nations Conventions that now justify prohibition should be rejected, preferably multilaterally, but if not unilaterally by the individual countries themselves, particularly those that are suffering most from the drug problem. This is the right way to resolve the existing and unacceptable tension between the drug control regime and universal human rights. Thank you very much."