

HERBERT VERE EVATT: AUSTRALIA'S FIRST INTERNATIONALIST

**1995 Daniel Mannix Memorial Lecture by Senator the Hon Gareth Evans
QC, Minister for Foreign Affairs, Melbourne, 31 August 1995**

At first sight, it might seem positively mischievous to honour the memory of Daniel Mannix by tonight honouring the memory of Herbert Vere Evatt. After all, while Dr Mannix, the son of an Irish farmer, and Dr Evatt, the son of a Hunter Valley publican, were both men of intellectual refinement, while both were loathed by the Protestant establishment of their day, while both were more fervent in their nationalism than their imperialism, while both spoke for essentially working class constituencies, and while both played roles in the dramas of the Australian Labor Party, they were undeniably political enemies in that great cataclysm of the 1950s, the Labor split.

In an earlier cataclysm which had divided not just the Labor Party but the whole country, the conscription campaigns of 1916 and 1917, Dr Mannix had emerged as the political enemy of another Labor leader, William Hughes. In later years, Dr Mannix made his peace with Hughes - not just because Hughes, expelled from the Labor Party, became more conservative with every passing year, and certainly not because Hughes was ever to show much regard for Mannix's beloved Irish Australian community, but because Dr Mannix was sympathetic when in the 1930s domestic tragedy struck Hughes with the death of his daughter. To my knowledge, Dr Mannix never made his peace with Dr Evatt.

Thirty years, however, have passed since the deaths of these foes of the 1950s, and it does not seem to me inappropriate to honour both the Catholic prelate and the Protestant layman and, indeed, to honour the one in honouring the other. For, whatever their differences late in their lives, Dr Mannix and Dr Evatt shared one trait: each was his own man.

I want to stress Evatt's confident distinctiveness because, while it is true that in the Labor Party we are jealous of our heroes' reputations, we are as prone

as others to dubious labelling. The fact is that Evatt defies easy labelling. Certainly, it would be a travesty to say that this scholar-lawyer-politician-statesman, with a personality to match both the extraordinary successes and extravagant failures of his career, was this or that sort of man and to leave it at that - which is precisely what too many of his admirers and detractors tend to do.

The outline of Evatt's career probably is still well enough known: the brilliant high school and university student in Sydney, the bright young lawyer, the New South Wales State parliamentarian in the 1920s, the High Court Justice and historian in the 1930s, the Attorney-General and Foreign Minister in the Curtin and Chifley Governments in the 1940s, the Leader of the Federal Opposition in the 1950s, the Chief Justice of New South Wales in the 1960s. I want tonight to stress especially Evatt's role as Foreign Minister - not least because this year's Fiftieth Anniversary of the United Nations is an ideal time to recall the splendid role he played in its creation. But, if you will bear with me, I want first to talk about some dimensions of Evatt's career, and some aspects of his character, which had made him a fascinating public figure long before he became Minister for External Affairs in 1941.

Formative Years

That Evatt's father was a country publican, that he died when Dr Evatt was six, that his widow then had six sons to raise, that he stormed through Fort Street and the Arts and Law faculties of Sydney University on an extraordinary succession of prizes and scholarships, and that he then became a Labor man, has allowed for a legend of the poor scholarship boy battling his way to the top, a working class hero. There is some truth to the legend, but not much.

His father might have ended his days as a country publican in the colonies but he had begun them as a schoolboy at Charterhouse, and his father's brother, Sir George Hamilton Evatt, became Surgeon-General in the British Army. The Evatts, in fact, were Anglo-Irish Protestant gentlemen given to producing soldiers for the crown and parsons for the established church. Dr Evatt's mother was also of Irish Anglo Australian Protestant stock and, by all accounts, a formidable lady who demanded much of her sons and gave them a

solid grounding in evangelical Anglicanism. A strong streak of puritanism was to mark Evatt for the rest of his life. In his mid-twenties he married the daughter of a wealthy American.

Given that background and his own intellectual brilliance, it is not too surprising that the young Evatt did not lack confidence. This could show itself in unimportant ways: outraging the rugby union gentlemen by bringing rugby league into the university, for example. (He even flirted with proper football, visiting Melbourne in 1910 with a Fort Street team to play what was then called Victorian Rules.) It could show itself in more important ways, as in 1927 when, after one term in the State Parliament, he publicly damned his leader, Jack Lang, stood successfully as an independent and was expelled from the State branch of the Labor Party complaining of Communist infiltration.

In a prize winning undergraduate essay which was later published, Evatt argued that in Australia the party differences were minimal: Whig liberalism had triumphed completely and rightly. In his view, however, there was a division, and it is worth quoting his youthful description of it: a division 'corresponding to that of minds conservative by nature and minds progressive by nature'. He continued:

In all domains of life and art we find one class desiring to press forward, to experiment, to find in any change a bettering of present conditions, and a second which clings with veneration to whatever is traditional and ancient, and which distrusts the dangerous and unnecessary proposals of what appear to it a shallow empiricism.

There is not much doubt about the side of the divide on which he saw himself, but it remains that he supported conscription in 1916 and, in his essay, he questioned the Labor pledge and Labor caucus solidarity as inimical to true liberalism. Nor was he much taken with the notion of employment preference for trade unionists.

It is also typical of Evatt that, apparently not fully extended by the High Court's demands, he turned to history in the 1930s with two pioneering books

- one defending Governor Bligh, till then generally seen as a tyrant properly deposed, and the other a defensive biography of W.A. Holman, generally seen in the Labor movement as a rat. That other great rat in Labor lore, Hughes, was also admired publicly and privately by Evatt.

Lawyer and High Court Judge

Evatt had a brilliant legal career by any standards. From the University of Sydney, he graduated with a BA (triple first), obtained an MA (first) and took a doctorate in laws (which later became his path breaking study of the reserve powers, *The King and his Dominion Governors*). In 1916 he became Secretary and Associate to the Chief Justice of NSW, Sir William Cullen. He went to the Bar in 1924 and took silk five years later. In 1930, at the age of 36 - the youngest ever appointee, and likely to remain so - he was placed on the High Court by the Scullin Government. There he served for the next decade, before succumbing at the age of 46 to the siren song of politics - leaving the Court younger than the age nearly every other Justice has arrived. As Commonwealth Attorney-General after 1941 he went back frequently to the High Court as an advocate - even arguing for the Government before the Privy Council in the Bank Nationalisation Case at the same time as being President of the UN General Assembly in 1948.

On the High Court bench, one of Evatt's most distinctive qualities as a Judge was his concern with social consequences and civil liberties; in his own words, he "always searched for the right with a lamp lit by the flame of humanity". His models were Holmes and Cardozo in the United States and Lord Wright in Britain. The best known example of this was probably his dissenting judgment in *Chester v Waverley Corporation* - the 'nervous shock' negligence case in which he eloquently took the part of the mother whose child had been drowned in a Council trench, and in which his statement of the law came soon to prevail. In constitutional cases he came down on the side of the States more often than the Commonwealth Labor politicians who appointed him would have liked, although more for reasons of legislative efficacy rather than any conceptual 'States rights' perspective. That he saw legislation as a medium for social reform, and had been a member of a reformist State Government when the Federal Bruce/Page Government was conservative, may also have coloured his views. Certainly no Commonwealth

power enthusiast could quarrel with his interpretation of the external affairs power in the *Burgess* case - which eventually became orthodoxy in the *Tasmanian Dam* case in the 1980s.

Speaking in 1965 of Dr Evatt's term on the High Court, the then Chief Justice, Sir Garfield Barwick, said this:

To the decision of such of these cases in which he participated, Herbert Vere Evatt made great contributions. His judgements in many of them provide forceful and lucid expositions and applications of the law. Many of such judgements examine and relate to each other in a masterly fashion the precedents of the past with which he made himself so precisely conversant as he applied himself so unstintingly to the pursuit of the answer to the problem which each case in its turn posed for decision. They disclose extensive and penetrating scholarly research which illumines the aspects of the law with which they deal. These judgements will long be used by students and teachers of the law, by practitioners and by courts of law... (they) expressed views of the law which were well in advance of his Honour's time and received acclaim from lawyers throughout the British Commonwealth including the Privy Council.

It has to be acknowledged that this was a very gracious tribute from Barwick, given not only all their obvious differences of outlook, but also their personal history. David Marr's biography of Barwick retails a story from their days at the Sydney Bar together which says much about their respective personalities. Evatt believed that logic would carry the weight of his argument, and never worried much about whom he was appearing before. Barwick, by contrast, believed in working the man, and urged Evatt to study a particular earlier decision of the judge in question about which - whatever its merits - the judge was inordinately fond. Evatt ignored Barwick's suggestion. Inevitably the judge asked him why he was not relying on his earlier decision. Evatt replied that his junior had not drawn his attention to the case. At that point, Barwick said "Go to buggery" and left the court.

State and Federal Politician

Stories like this, of which there are many, are perhaps the reason why Evatt found himself something of a political loner when, after stepping down from the High Court bench and entering Federal parliament in 1940, he became a member of John Curtin's Government in 1941. While he had made some friends in the leftish artistic and literary worlds of the time, mainly through his wife, Mary Alice, he was too highly strung, abrasive and egotistical for much in the way of political friendships. Probably the closest he came to a friendship in the ministry was with Jack Beasley: it is somehow typical of Evatt that he should cultivate Beasley, who rejoiced in the nickname of 'Stabber Jack' and had been one of the Lang group which brought down the Scullin Labor Government in 1931 - another 'rat'. Despite courting men as diverse as John Wren in Melbourne and Clarrie Fallon in Brisbane, he did not have a personal power base in the party when he arrived in the Federal Parliament, and never subsequently acquired one.

Evatt entered the NSW Parliament as the member for Balmain in the 1925 election when the Lang Government took power on a platform of extensive social and labour market reform. He managed the preselection hurdle partly by relying on the then multi-member character of constituencies, which made it rather easier; and secondly by making a successful pitch for trade union support by writing a series of influential articles about the victimisation of workers after the 1917 railway strike. He immediately earned Lang's displeasure by defying the party's conventions on seniority and nominating himself for Attorney-General - he obtained two votes in caucus. He was, nonetheless, an energetic contributor to the Lang Government's pioneering social legislation. This was the first government in the world to provide pensions for widows on a non-contributory basis, through the 1925 Widows' Pension Bill which the Opposition described as 'the most soul-destroying, poisonous bill'. Seventeen years later the Commonwealth introduced similar national legislation. Evatt played a large part in framing both bills. His drafting skills were also applied to the 1926 Workers Compensation Bill which he piloted through the NSW Assembly and the 1927 Family (Child) Endowment Bill, the model for Commonwealth legislation in 1942.

Evatt returned to politics, becoming the Federal member for Barton, in August 1940 - with the help of an invitation from the ALP's National Executive, and his willingness to contest a UAP-held seat when no-one in a safer seat would

withdraw for him. When Curtin formed a government in October 1941, Evatt became both Attorney-General and Minister for External Affairs.

Even with the preoccupations of the War, which saw Evatt work to a schedule that even modern ministers would regard as extraordinary, he retained his commitment to social reform through legislation. The defence power allowed the Commonwealth the latitude during the war to manage the economy in areas like labour market regulation and prices policy. Evatt, keen to build on these gains, led the efforts of successive Labor governments to extend the Commonwealth's peacetime powers. Ever the legalist, he saw constitutional reform as the means for this: between 1944 and 1948 he proposed and supported five measures for amendment of the Constitution, only one of which, on social services in 1946, was successful. The motif of most of the proposals was post-War reconstruction, retaining or building on powers which Canberra had exercised in wartime, although Evatt also added to the wide ranging reform proposals of the 1944 referendum a proposal for constitutional guarantees for freedom of speech, expression and religion.

Evatt's passion for civil liberties was actually never more finely demonstrated than in the battle he led not in favour of a constitutional amendment but against one - the 1950 referendum on the abolition of the Communist Party. It is worth mentioning this achievement - which I would regard as the finest of Evatt's political career - at this point, although to do so is to jump forward in time to his period in Opposition. When the Menzies-Fadden Government was elected in 1949, it was against the backdrop of fears of a world communist revolutionary movement, and the new Government's first major legislative initiative was the 1950 Communist Party Dissolution bill which, once passed, was immediately subject to a High Court challenge. Under fire from conservatives and some in the ALP, Evatt accepted the brief for the Waterside Workers Federation, one of the plaintiffs mounting the case alongside the Communist Party. The High Court held the act was *ultra vires* the Commonwealth Parliament. Menzies then called a double dissolution, was re-elected, secured control of the Senate, and announced a constitutional referendum to overcome the High Court decision. Throughout an intense and bitter campaign, Evatt brilliantly, forcefully, tirelessly - and almost single-handedly - dwelt on the potential for abuse if government could ban a political ideology, condemning resort to totalitarian methods to fight totalitarianism.

His argument eventually won the day in enough States to defeat the referendum. It was a wonderful victory for Evatt, but it came at a huge political cost: the mantle 'defender of communism', reinforced when he leapt headlong into the Petrov affair three years later, was to hurt Evatt badly, in subsequent polls and in the internal politics of the Labor Party. But as Justice Michael Kirby has written, this 'libertarian warrior's... leadership in the defeat of the referendum campaign, against all odds, was a wonderful and lasting contribution to the political ethos of this country'.

Foreign Minister

If the referendum campaign was Evatt's finest domestic political achievement, it was as foreign minister that he made his most enduring contribution to the course of Australian history, and to Australia's place in the world. While not Australia's first foreign minister - 'External Affairs' had existed as a separate portfolio since Federation, although more often than not held by the Prime Minister of the day as a minor additional encumbrance - he was certainly the first to really deserve the title. Certainly I think it is accurate to describe him as Australia's first genuine internationalist. Although John Latham and Stanley Melbourne Bruce were both seen in Geneva as friends of the League of Nations, there were no Australian political leaders before Evatt, and have been very few since, with anything like his commitment to the building of cooperative multilateral institutions and processes to address both security and development objectives.

Foreign ministers, in the very nature of their job, have to deal with governments, personalities, circumstances and policies in constant flux, and their lasting monuments tend to be few. Evatt's successor, Percy Spender, was a lucky exception, leaving behind him after only two years in the job both the Colombo Plan and the ANZUS treaty. In Evatt's own eight years in office, there are really only two lasting monuments that really stand out, but what significant landmarks they were! The first was to swing Australia behind the Indonesian Republic and contribute significantly to its effective independence

from the Netherlands. And the other - which I particularly want to focus on tonight - was his contribution to the founding of the United Nations. Evatt's contribution to the San Francisco Conference of 1945 was the stuff of which legends are made, and rightly so - especially in his fight for the rights of the smaller powers against the greater in the roles of the General Assembly and the Security Council, and in his faith in the UN as an agent for social and economic reform and as a protector for human rights.

The Big Three - the US, the Soviet Union and the UK - were interested in a successor to the League of Nations as an international peace-keeper only if it met their needs, was their creature and threatened them with no embarrassment. It was the Big Three - supplemented by this time by China - who drafted a charter for a United Nations. It was the Big Five - by this time with France included - who invited the other forty-five states then comprising international political society to discuss their draft at San Francisco. If a small power like Australia wanted to see changes made to that draft charter, it would clearly have to force those changes on very reluctant, not to say intransigent, great powers. And the great powers so organised the conference as to stack the odds against small power impertinence. The conference lasted for three months - and it comprised some four commissions, twelve technical committees of the whole, a steering committee of the whole, an executive committee and a host of sub-committees!

It was in that maelstrom that Evatt made his mark. Assisted by a handful of very able officials Evatt daily raced from committee to committee in a performance of energy, brilliance and judgment rarely seen. The United States sent a delegation of 174, for example. Evatt had a delegation of 45, but he used only a handful; it was largely a one-man band. By the end of the conference, he was accepted by all there as the leading voice of the medium and small powers, the one with whom the great powers had to treat.

Scarcely any aspect of the long Charter for the United Nations Organisation which emerged from the San Francisco Conference escaped Evatt's attention, but I want tonight to mention some particular campaigns which engaged him.

One concerned the role in the organisation of the great powers, who envisaged a Security Council which would handle threats to the peace, and on which

each of them would enjoy a veto right on all matters except purely procedural questions (though that left a veto on what would be regarded as a procedural question) and also peaceful settlement procedures where they were parties to disputes. Evatt accepted that the wartime great power concert had to underpin a post-War system, but he wanted the veto limited to decisions on the imposition of sanctions against aggressors. Although Evatt is perhaps best remembered for his fight on the veto question, he was in fact locked out of much of the politicking on that question, and the fight tended to be carried by liberal elements in the large United States delegation unhappy with the prospect that even investigation or discussion of an issue could be vetoed. In any event, he and those who thought like him lost the fight: the Soviet Union, which feared Western use of the United Nations against it, was immovable, and the great powers retained virtually a blanket veto right.

Evatt was unusual in that, while he was prepared to accept a high degree of great power domination of the United Nations for a time, he did not see this hegemony based on the War-time alliance continuing indefinitely. He was very keen, therefore, to prevent a great power veto on subsequent attempts to amend the Charter. Here, too, he failed despite a strong fight. Again, the Soviet Union was immovable, but in truth, none of the great powers wanted to surrender control over the future of the organisation.

Evatt also fought hard, and this time successfully, to prevent a great power veto over regional security arrangements. He feared that in certain circumstances the Soviet Union or China might veto United States assistance to Australia of the kind which so recently had saved Australia's bacon in the war against Japan. This was also an issue of sensitive concern to the Latin American states, who comprised more than a third of the states represented at San Francisco, and theirs was probably the key role, but he entered the fray and he was on the winning side.

Evatt's greatest success was in forcing very reluctant great powers to accept a wide role for the entire United Nations membership in the General Assembly. The great powers would have made of the Assembly a talking shop, and one limited to vague generalities at that. In a stubborn, wearing campaign which lasted for months, Evatt succeeded in winning for the Assembly the right to discuss and make recommendations on any matter covered by the Charter

with the single exception of security questions actively before the Security Council. In this campaign, he was drawn into direct negotiations with the representatives of the great powers, and they accepted him as the de facto representative of the middle and small powers.

A vital prerequisite for any international organisation is that member states accept some loss of domestic jurisdiction. While Evatt was a convinced internationalist, he was also a nationalist and, a child of his time, a stout defender of White Australia. Projecting his experience of Australian industrial relations, where disputes could be manufactured on the expectation that subsequent conciliation or arbitration procedures were likely to provide some concessions for a professedly aggrieved party, he was concerned that a state could force Security Council discussion and recommendations on White Australia merely by threatening to go to war on the issue. As he put it, there would be a premium on violence. For once, he was on-side with the Soviet Union, which was the first to seek to have a domestic jurisdiction guarantee inserted in the Charter, but Evatt can be given the credit, if such it be, for having its ambit widened to cover everything except actual enforcement action by the United Nations. He was not especially hypocritical on this matter, though, accepting that any number of later international conventions could remove questions from domestic jurisdiction.

Evatt also led a successful - and exceedingly worthy - campaign, this time mainly against the United States, to have a full employment pledge written into the Charter. At the time there was widespread fear of a world economic recession after the war. This did not happen. But the pledge also reflected Evatt's view and that of his government that economic and social issues must rank with more explicitly military issues as central to international harmony and, therefore, as United Nations business.

The last of his campaigns I would mention related to colonies. Although Evatt was determined that Australia should retain control of Papua and New Guinea, and although he believed that some colonial societies would need indefinite tutelage by Western imperial states, he was anxious to have all colonies brought within the scope of the United Nations and not just the few mandated territories taken from Germany and Turkey back in 1919. He was concerned mainly to guarantee humane and progressive administration of

colonies and to remove them from the context of imperial conflict. But in pursuit of this, he was responsible for having written into the Charter a requirement that all colonial powers report to the United Nations on their administrations. Rather to his chagrin, this clause later was to serve as the platform for the whole revolutionary decolonisation process at the United Nations.

As I have said, the United Nations was established on the assumption that the great powers' War-time alliance would continue into the peace: that they would police world security by means of United Nations procedures, and in appropriate association with other United Nations members. In fact, the Cold War had already begun in 1945, and the result was that the United Nations would be largely paralysed in conflicts involving the great powers and their clients. As Evatt complained in 1947, 'the old order is dead, while the future order is powerless to be born'. This disheartened him. So did the frequent preference of United Nations members for political processes rather than the legal processes enshrined in the Charter and congenial to his temperament and training. Informal charter amendment by Assembly resolution scandalised him. It was not that he was naive. He could play politically hard himself when he thought Australian interests were at stake, whether in defending South Africa, forcing through the kind of trusteeship agreement he wanted for New Guinea, or in refusing to submit an agreement for Papua at all. Nor was he at all pacifist: he valued the United Nations security system precisely as providing for the forceful suppression of aggressors. But he still saw the United Nations as the best hope for world peace in the 1940s and 1950s if only states could be persuaded to use its processes. For this reason, he had Australia continue as a busy, constructive member of the United Nations. In 1948, he was delighted to succeed representatives of Belgium and Brazil as President of the General Assembly.

He had other reasons, though. One was that Australia, a barely emerging British dominion at the time, had made its presence felt at the 1919 Paris Peace Conference in which the League of Nations was established, but had later drifted back to the margins of international society. He saw the survival of the United Nations and Australian busyness in its councils as not the only way of keeping Australia involved in international affairs, but as one very important way - a view to be shared by his conservative successors.

The other reason was that Evatt, while aware of the need for regional security arrangements and of the unequal distribution of power among states, was never quite the complete devotee of power politics. In his view, states like Australia could exercise influence through the quality of their representatives, by the value of their ideas, and by the persistence of their diplomacy - and that is very much a view I share.

Evatt's Foreign Policy Legacy

Evatt's conviction that Australia's national security interests would be served by developing an international system of security through the United Nations clearly has a resonance in contemporary Australian policy. I can't put the point more succinctly than it was made in our 1994 Defence White Paper:

Our national interests are served by ensuring the existence of effective UN mechanisms for conflict prevention, management and resolution. As a middle power, we have a particular interest in fostering an orderly international system in which agreed norms of conduct constrain the use of force, and in supporting international institutions which give us important opportunities to shape that system. We support UN and other multinational peace making and peace keeping endeavours because we consider that institutions which are effective, and are seen to be so, in crises today are more likely to be effective in helping to protect Australia's interests should they be challenged in the future.

It is interesting to observe that Australia's recent proposals to strengthen the UN's role as an instrument of cooperative security seem to have struck a particular chord with countries such as Argentina, Brazil, the Nordics, Poland, Japan and Jordan who share our interest in building an international system which does not rest solely on neo-realist theories of 'great power balance'. Evatt, writing in 1948, pointed to the explanation for this:

The truth is that Great Powers are inevitably preoccupied with questions of prestige and spheres of influence, whereas lesser powers whose interests in lasting peace are just as great, if not greater, are more detached in their outlook on many issues and are in a better position to make an unbiased judgment on the justice of any proposed settlement.

For Evatt, the UN was to be an agent of *collective security*, based on the concept that its member states would agree to renounce the use of force amongst themselves and collectively come to the aid of any member attacked by an outside state, or by a renegade member. I have argued, by contrast, that the central sustaining idea for contemporary efforts, in the UN and outside it, to maintain international peace and security should be the larger one of *cooperative security*. This concept embraces not just collective security, but two other ideas as well - common security and comprehensive security - which have been current in thinking about international security co-operation for some time. *Common security* was first articulated as a concept in the 1980s: essentially it is the notion of states finding security with others, rather than against them. *Comprehensive security* is simply the notion that security is multidimensional in character, encompassing a range of political, economic, social and other non-military considerations as well as military capability.

Cooperative security is a useful term not only because it brings these three approaches together, but does so in a way which emphasises prevention and at the same time encompasses the whole range of responses to security concerns, both before and after the threshold of armed conflict has been crossed. At one extreme this would involve long-term programs to improve economic and social conditions which are likely to give rise to future tensions; at the other it would include enforcement of peace by full scale military means. Evatt in fact did foreshadow in his own thinking some of these 'new' concepts in arguing, as he did, at San Francisco for a Charter that paid more than lip service to economic and social issues, not just for their own sake but because these represented the root causes of conflict.

A priority theme of our activity at the UN in recent times has been to urge that the Secretary-General and member states give greater weight to preventive approaches, by putting more priority on preventive diplomacy and addressing

the underlying causes of tensions and disputes through peace building - by which we mean both international laws, regimes and arrangements on the one hand, and on the other hand in-country strategies aimed at economic and social development and institution strengthening. All this would have met Evatt's approval, not least because of his lawyer's faith in international arbitration and other legal procedures for the peaceful settlement of international disputes.

At San Francisco, Evatt was acutely conscious of the balance to be struck between establishing an effective world body, necessitating the backing and participation of the great powers, and at the same time keeping within bounds the extent of the influence which those powers would wield through the organisation. This remains a pressing issue in 1995. A feature of the period of Security Council activism since the end of the Cold War has been the concern of many countries about domination of UN decision-making by the five Permanent Members of the Council, and more specifically by the three Western members, the so-called P3. One result of these concerns is that, for the first time since 1945, there is now a real possibility that new permanent members will be added to the Council. Australia has strongly supported such a change. Our reasoning is drawn from the same pragmatic national self-interest that inspired Evatt; we do not aspire to permanent membership ourselves but we have a strong stake in an effective Security Council. To retain legitimacy and a guarantee of international support in responding to the range of new and difficult situations which now confront the international community, the Council must represent the broad range of interests and perspectives of UN member states, and it must reflect the realities of power at the turn of this century, not those prevailing fifty years ago.

One of the crucial elements in any expansion of the Security Council's permanent membership is the veto power. The fact is that those who have it cannot be forced to give it up - indicating how far-sighted Evatt was in trying to remove the great powers' ability to veto Charter amendment. But if the veto were extended to all serious aspirants for permanent membership, we would have an unworkable Council, with up to ten countries able to block UN decision-making. At last year's General Assembly, I stated Australia's preference that the veto not be extended to any new permanent member and proposed - no doubt quixotically, since the existing P5 would have to agree to

it - that the veto power of the existing Permanent Members be slightly diluted by requiring two from their number to concur in its exercise. One alternative approach would be to revive Evatt's own proposal that the veto be excluded in its application from all aspects of peaceful settlement procedures, or even confined solely to Council action taken under Chapter VII (that is, the enforcement provisions of the Charter): but no doubt that is an even more quixotic aspiration.

I expect it will take considerable further negotiation before the question of Security Council structure is resolved. The point here is, as Evatt would have appreciated, that some compromise will have to be struck if there are to be new permanent members at a time when the overall UN membership will not support an unqualified extension of the veto power. But the point is also that both the overall membership (the majority of whom, like Australia, want an effective, representative Council), and the existing permanent members (who will otherwise face the risk of erosion of the authority of a key body in which their influence is wielded), have reasons to find such a compromise.

It was not only the global but regional security environment that occupied Evatt's attention at San Francisco. He had no illusions that the UN could offer any absolute guarantee of protection against armed threat to Australia, and recognised that if collective security was found wanting, Australia would need to "fall back on regional arrangements and ultimately upon those of its own defence forces and those of its allies". His starting point was to seek to keep the U.K. and the United States engaged in maintaining security and order in the South West Pacific.

We see regional security rather differently fifty years later. The emergence of strong independent states in the Asia-Pacific region since 1945, and of groupings like ASEAN, has given Australia opportunities to foster active regional co-operation with a much wider range of prospective partners than was possible in the 1940s. Our alliance with the United States and our support for a US presence in the region remain constants in our approach to regional security. But our thinking has changed: from seeking great power guarantees and 'special relationships' to our advocacy of cooperative security at both the regional and global levels. And our circumstances have changed: from an apprehension of threats from the North, to our recognition now of the

opportunities to advance our economic and security interests which exist through partnership and integration with our region.

Evatt's insistence on including specific language on co-operation on economic and social issues in the Charter was motivated by the Labor Government's goal of maintaining full employment after WWII. Under the terms of the UN Charter as it eventually emerged, the Economic and Social Council (ECOSOC) shares with the General Assembly responsibility for the UN's promotion of international economic and social co-operation. Largely due to his persistence, UN member states pledged to take 'joint and separate action in co-operation with the [UN] organisation' for the achievement of goals specified in Article 55 of the Charter, including 'higher standards of living, full employment and conditions of economic and social progress and development': indeed this undertaking, in Article 56, became known at San Francisco as 'the Australian pledge'.

Some Americans, including Nelson Rockefeller, then a State Department adviser, suggested at the time that Evatt wanted language in the Charter which would allow the Government in Canberra to use the external affairs power to legislate on matters outside the federal powers listed in the Australian Constitution - an interesting forerunner to some of the claims we hear to this day from sceptics and cynics on the Opposition benches! But it is far more likely that Evatt was sticking to a brief which reflected the common policy assumption in Australia at the time, which was that full employment in Australia would largely depend on the major economies' willingness to pursue that objective.

One of the few positive effects of the paralysis of the UN Security Council during the Cold War was that the social and economic goals set out in Article 55 became for the most part central concerns of the UN. Ironically, one of the exceptions was full employment, as multilateral co-operation on employment policies and related financial and trade policy were discussed in the International Labour Organisation, the international financial institutions and the OECD rather than the UN itself. In contrast, the UN's role in such Article 55 areas as technical development assistance, poverty alleviation, children's welfare, refugee problems, international health and human rights has been very substantial - and the member states' pledge in Article 56 has taken a very

concrete form through support for multilateral aid funds and programs and through bilateral assistance.

The pledge in Article 56 has come to be one of the features of the UN that distinguishes it from the League of Nations. It has been the basis for initiating a range of programs and a variety of roles that have helped the UN endure its setbacks and retain the faith of member states when the League failed to do so. A major debate is currently taking place - in which Australia is a central participant - about the UN's role in economic and social development, and about making ECOSOC a more effective body for developing and implementing programs for international co-operation in a more co-ordinated and effective way.

A further element of continuity in our foreign policy from Evatt's period as Foreign Minister is our commitment to the promotion of human rights. As President of the UN General Assembly in 1948, Evatt presided over the adoption of the Universal Declaration of Human Rights. This was much more than a symbolic act for him: throughout his career there was evidence of his basic attachment to civil and political and economic, social and cultural rights. In the 1920s in the NSW Parliament, he introduced abolitionist legislation and argued for minimum labour conditions. At San Francisco, he backed Jessie Street's efforts to obtain gender equality within the UN as part of the Charter. As a lawyer he defended freedom of speech in numerous cases, with the struggle over the Communist Party dissolution act no more than the icing on the cake in this respect.

The Universal Declaration remains the foundation for the standards of human rights and fundamental freedoms accepted by the UN Member States - the basis for the six major human rights instruments and all the machinery and expert bodies associated with them. Two Australians, Professor Philip Alston and Justice Elizabeth Evatt - Dr Evatt's niece - serve with distinction on two of these bodies, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee respectively.

Dr Evatt was not content, however, with establishing and articulating standards in the UN; he also sought effective ways of implementing them. In 1947 Australia proposed that an International Human Rights Court be

established. This was an idea well ahead of its time, and even in 1988 when we revived the idea on the occasion of the 40th anniversary of the adoption of the Universal Declaration, the notion of a single supervisory body was too bold for many. Several developments since, including the establishment of tribunals to consider extreme and outrageous human rights violations in the former Yugoslavia and Rwanda, and the growing realisation that six parallel treaty bodies is a cumbersome arrangement, suggest that the option of a single body to monitor observance of basic standards may be an idea whose time has come.

Conclusion

As we all know, Evatt's career after his days as foreign minister, which ended with electoral defeat in 1949, was not a very happy one for him or his Party. Opposition was not his forte. Parliament was not his preferred forum. Domestic politics did not come easily to him, although no one should ever forget his inspired leadership of the constitutional referendum campaign in 1951. Party politicking was almost entirely beyond him, and it may be that his ineptitude here made the great Labor split of the 1950s worse than it need have been. Probably we will never know to what extent declining health contributed to his difficulties in those years. By the time he retired from politics and became Chief Justice of New South Wales in 1960 his condition certainly was sad indeed.

Evatt's memory has been tarnished in this country because of events in the 1950s and the embarrassments of his final years in public life. But for all the controversy and criticism he generated, Evatt was one of the defining figures in our nation's history. It is an ambiguous legacy, true, for those of us in the Labor movement His setbacks as Labor leader in the 1950s and his contribution to the ALP split contributed mightily to keeping the Party out of power for twenty-three years. But on the more positive side, Evatt has left us with an invaluable legacy in our law, our institutions and elements of our policy because of his vision for Australia as a social democracy, because of his fight against a proposal for constitutional change which would have worked tragically against this country's fundamental freedoms, and because of

his far-sighted pursuit of our interests in collective security and international cooperation.

It is above all the Evatt of San Francisco who deserves to be remembered, and remembered with bipartisan pride. As Paul Hasluck, who worked with him at San Francisco (and had very mixed feelings indeed about his personal qualities), wrote: 'at the conclusion of the San Francisco Conference...Evatt... was recognised as a figure of moment on the world scene'. At the conclusion of the Conference, the American Secretary of State, Edward Stettinius, declared that 'no one had contributed more to the Conference than Mr Evatt'. The Peruvian delegation went so far as to move a resolution that the small powers 'pay homage to their great champion, Mr Evatt'. And the *New York Times* said of him, in perhaps the finest tribute of all, that there were two kinds of power, that exercised through crude national muscle and coercive methods, and that purveyed by the force of ideas, argument and intellectual effort - and that Herbert Vere Evatt epitomised the latter.

All in all, an Australian not to be forgotten - and certainly not in this Fiftieth Anniversary year of the birth of the United Nations.