

HUMAN RIGHTS IN AUSTRALIAN FOREIGN POLICY:

WHERE TO FROM HERE?

Address by Senator the Hon Gareth Evans QC, Minister for Foreign Affairs and Trade, to the Centre for International and Public Law Conference on Human Rights, Canberra, 17 July 1992

From 1945 to 1991 the East-West divide, and what flowed from it, was the central organising principle of international affairs. The North-South divide - between the haves and have-nots - always mattered at least as much in human terms, but it is only now that it has assumed anything like the same prominence in international affairs.

In both East-West and North-South divides, the issue of attitudes to human rights has always constituted a particular fault line of its own. The latter years of the Cold War, particularly with the impetus given by the commencement of the Helsinki Process in 1975, saw the East-West human rights gap begin to be bridged. By the time of the anti-communist revolutions of the last three years, the process had become irresistible: the call for equal civil and political rights was, as much as any economic motivation, what produced the historical earthquake which has seen the disintegration of the USSR, the disappearance of communism as a ruling force in all but four countries, and the emergence of nearly twenty new states on the Eurasian landmass.

By contrast, in the North-South divide, differences of perception about what are human rights (or at least about which human rights matter most), and differences about what it is proper for the international community to do about human rights violations, still loom very large indeed.

For all the dramatic change in the international environment in recent times, we are still a long way from the advent of a world, foreshadowed in the preamble to the Universal Declaration of Human Rights, in which all human beings shall enjoy freedom of speech and belief, with life and personal liberty protected by the rule of law.

Today I want to suggest that, situated as we are in the Asia Pacific region, and with our strong record of unswerving commitment to human rights, Australia is uniquely placed to help bridge the divide between North and South that will be a central feature of the human rights debate in the nineties.

I want to suggest that while Australia's international human rights efforts, both multilateral

and bilateral, have worked well enough to date, and while we should certainly continue to pursue them, there are some new approaches to international human rights protection which we are well placed to support and endorse, and which should play a larger role in our repertoire in the future. I want to refer to two such new approaches in particular: first, the possibility of the international community playing a more direct, hands-on role in the resolution of certain "internal" problems; and secondly, the role that countries like Australia can play in human rights breach-prevention through so called institution-building strategies.

Present Approach

Multilaterally, Australia's strategies to date have been threefold: to encourage adherence to existing human rights instruments, to ensure the effective operation of monitoring machinery, and to expand the body of human rights treaties in specific areas.

To establish a basis for encouraging others, Australia has become party to all major international human rights instruments. Amongst the more recent have been the Convention on the Rights of the Child, which we played a major role in developing and which we ratified on 17 December 1990. We also played a leading role in promoting wider adherence to the Second Optional Protocol of the International Covenant on Civil and Political Rights against the death penalty, and acceded to it on 2 October 1990.

To be credible internationally in promoting human rights we not only have to sign up to the relevant international legal instruments, but also have to acknowledge Australia's own deficiencies in the human rights area and commit ourselves to overcoming them. In that context, I am pleased that we have also now at last acceded, on 25 September 1991, to the First Optional Protocol. As a natural extension of that accession, the Government is currently supporting the candidature of Justice Elizabeth Evatt, who addressed the conference yesterday, for election to the Human Rights Committee established under the ICCPR. (As you would be aware, the convener of this conference, Professor Phillip Alston, is already a member of the Economic, Social and Cultural Rights Committee.)

We have complemented our activity in multilateral arenas by encouraging others to adhere to international human rights instruments, and by supporting UN mechanisms for monitoring human rights observance. We have pursued the latter particularly through the UN Commission on Human Rights, of which Australia is currently a member, and through the Third Committee of the UN General Assembly. We are also hoping that coordinated efforts to improve human rights will emerge from the Second World Conference on Human Rights to be held in Vienna next year, which will hopefully further define the relationship between democracy, development and human rights.

Encouraging wider adherence to existing instruments should continue to have a great prominence in our policy on human rights in coming years. There are, of course, many gaps remaining to be filled - for example, by the UN Declaration on Human Rights Defenders and on the Rights of Indigenous Peoples which are currently under consideration. Nevertheless, the broad legal foundations on which more universal respect for human rights can be built are now largely in place.

Our present human rights approach has a strong bilateral as well as multilateral dimension, extending both to states who clearly share our basic perspective and those who may not. Paying attention to the policies and practices of so called like-minded states on human rights issues can assist Australia's efforts towards achieving better human rights observance for a number of reasons. It should, for example, facilitate the adoption of common fronts on human rights issues, which can be immensely valuable. It is also important to have a sense of the extent to which we do in fact share the policy goals of 'like-minded' states. Actions and attitudes by such nations provide the context within which Australian actions will often be understood.

The record unfortunately shows, however, that some like-minded states pursue policy applications of human rights which we would not wish to support. Some states appear to be considerably less concerned about the gross violations of the rights of allegedly non-democratic opposition forces than with the rights of often self-proclaimed pro-democracy or "liberation" groups. A striking example of this is the practice of some countries in providing military advisers or even arms to nationalist or "democratic" governments or opposition groups as part of their efforts to encourage the growth of democracy and thus of human rights. Australian policy in such circumstances could be devalued by too close an association with aspects of others' policies.

In making human rights representations to countries who may not be so like-minded, we have sought to ensure that Australia's approach is characterised by a focus on the kind of rights which can readily be accepted as universal in character, by consistency, attention to detail, and - crucially - a willingness to respond frankly and fully to criticisms directed to us.

In the past five years, we have made over 2300 official representations to more than 120 countries - including to close allies such as the US; major trading partners such as Japan and China, the UK and other Western European countries; countries in the Middle East, Africa and Latin America; as well as to our regional neighbours including Indonesia, Papua New Guinea, Singapore and the Philippines.

Consistency means simply adopting so far as possible the same approach to all cases of alleged human rights abuse wherever they may occur, not picking and choosing between countries on other grounds. This maintains a minimum but important protection against

politicising an approach which aims to work impartially for a common good. In some cases making diplomatic representations may be the only available measure, but they can also become an overly familiar and therefore less effective routine: consistency should not be viewed as adopting a standard process, but as a means of achieving policy goals.

There can be difficult conflicts arising from time to time between human rights objectives and other entirely legitimate national interests. This need not be a reason to reduce engagement on human rights, but it is important to recognise that this engagement may not always be cost-free, at least in the short term. Some countries do take non-economic factors into account in trade decisions, for example, particularly if the margin of economic advantage is slight. And there can be other, more diffuse, side-effects of pursuing a policy which involves criticism of, and efforts to change, others' behaviour.

I remain convinced, however, that an effective human rights policy can be pursued with relatively little cost in terms of lost opportunities and serious friction in our external relations. It is a matter of handling human rights issues sensitively - relying (other than in exceptional cases like South Africa, China and Burma) on quiet persuasion rather than punitive aid, trade or investment sanctions or over-strident condemnations. To work in this way can in fact over the longer term strengthen and broaden bilateral relations, not least by providing a channel for the airing of conflicts and interests and values which may otherwise go un-articulated.

Many human rights issues which arise in a North-South context are not easily susceptible to definitive solution, because they are embedded in decades - if not centuries - of political and social battles, ideological debate and point scoring. If these issues are to be resolved, I believe a very important component of the process will be repeated practical exchanges between countries on particular human rights problems, in dialogue not just between governments but, to some extent, between and within cultures. A good example of this has been the constructive and ongoing dialogue initiated by the Australian human rights delegation in its visit to China last year, which is to be continued by a second visit later this year.

New Approaches

All that said, there is nonetheless emerging in significant portions of the international community a demonstrated willingness to take strong collective interventionist, and even punitive, measures in cases of widespread and gross human rights abuse, in circumstances which might in the past have been regarded as internal in character and thus beyond the reach of any such international action.

The application of sanctions against South Africa by the international community has always been seen as a special case, but there are an increasing number of comparable

cases now emerging - e.g. the action taken under the auspices of the United Nations to protect the Kurds in the aftermath of the Gulf War, and the increasing preoccupation with the traumas accompanying the break up of Yugoslavia.

The international community's commitment to Cambodia through the United Nations is perhaps the most interesting, and potentially far-reaching, example of all of a new international approach on human rights matters. The Comprehensive Settlement on Cambodia signed on 23 October last year - and now being implemented by nearly 16,000 troops, drawn from 29 countries, and a major civil administration component - provides various measures for the protection of human rights, including those to be enshrined in Cambodia's new constitution when it is drafted. The Settlement also provides in Article 5 (4) of the Agreement on the Sovereignty, Independence, Territorial Integrity and Inviolability, Neutrality and National Unity of Cambodia, that "in the event of serious violations of human rights in Cambodia [the Parties to this Agreement] will call upon the competent organs of the United Nations to take such other steps as are appropriate for the prevention *and suppression* of such violations in accordance with the relevant international instruments".

In the discussions leading up to inclusion of this provision, there was some consideration given to inserting a direct reference to the possibility of international military intervention if necessary in such a case. While it was finally decided not to be quite so direct, it must nevertheless be said that this provision - and particularly the reference to "suppression" - is perhaps the strongest guarantee of internal human rights ever included in an international instrument. Its strength is even greater when you recall that the Agreement was signed by all permanent members of the UN Security Council, all of Cambodia's neighbours, and a number of other countries including, of course, Australia.

Some have argued that these various emerging precedents constitute a new international law principle, namely recognition of a "humanitarian right to intervene". Thus, for example, my friend and colleague Polish Foreign Minister (and distinguished international lawyer) Krzysztof Skubiszewski, speaking at the UN General Assembly last year, drew attention to Secretary-General Perez Cuellar's statement in his annual report of that year "that the principle of non-interference with the essential domestic jurisdiction of States cannot be regarded as a protective barrier behind which human rights could be massively or systematically violated with impunity", and went on to say:

It should be made clear that the exception of domestic jurisdiction does not apply to any case where there is international regulation. And today practically all the multifarious human rights and fundamental freedoms are subject to treaty and other obligations. Hence their violation does not belong to the reserved domain of States, while individual or concerted action by Governments in defense of human rights does not constitute any interference or intervention in the internal affairs of the State.

One should certainly not overstate the extent to which any such intervention right is now recognised. One needs to retain a degree of healthy scepticism about the gap between rhetoric and action when it comes to countries applying similar responses in practice to what are in principle similar cases. A very careful case by case approach will in practice be adopted. But one can certainly say that the principle of non-intervention is no longer anything like as unquestionable as it was in the period of decolonisation.

Active interventionist measures are on any view ones of last resort. One has to acknowledge that the more frequent use of punitive responses linked to human rights issues could deepen the suspicion of many developing countries that those issues were being used by economically powerful states as an excuse to impose their own values or national interests on others. The international debate on this difficult issue could thus become frozen into unproductive confrontation between developing and developed states.

The focus of Australia's human rights policy on the universality of rights attempts to sidestep precisely this sort of impasse. There is probably no surviving value system significant enough to underpin a culture which does not aspire - at least publicly - to increase human dignity and freedom from fear. Similarly, there are few governments which seriously argue that the Universal Declaration does not apply to them by virtue of some special and uniquely worthwhile features of their own culture.

But the existence of certain basic human aspirations and needs, and of international legal norms giving definition to human rights, does not remove the complexities either of pursuing human rights across cultural differences, or of a society reducing abuse within itself. It is true that it is often political pragmatism and expediency, rather than cultural difference, which motivates both violation of rights and the charge by some governments that criticism of even gross abuse is Western cultural imperialism. In these cases, common ground is more likely to be found with the victims of abuse than with governments.

Abuse can also be structurally embedded in ways that are difficult for governments to undo. Reducing abuse is not always simply a matter of a government refraining from action, but may require transforming, and sometimes simply improving, entire networks of social organisation and control. Abuse can also be deeply ingrained socially. This is exemplified by the systematic cruelty towards, and exploitation of, women in many parts of the world, sometimes despite the efforts of governments and not supported by the ethical ideals to which the particular culture aspires.

To the extent that the debate over cultural imperialism can be resolved, it will be achieved not in theory, but in the process of dialogue and collaboration on the concrete steps needed to guard against abuse. It would be particularly productive, in my view, if we devoted more effort in future to developing measures, incremental and well-targeted, to

strengthen the infrastructures or institutions contributing to human rights observance. Australia has, for example, been active in providing advice to newly established human rights institutions, including in Russia, India and Indonesia. This is one area where Australia's expertise can be used to particularly good effect. I am pleased that some foreign governments have actively sought our advice and in some institutional aspects apparently see us as a model.

At Australia's initiative, some members of the Commonwealth are also considering coordinating, through the Commonwealth Secretariat, assistance to developing country members in strengthening the institutions which can protect human rights observance. This would in effect build on assistance Australia has already given some Commonwealth members on constitutional and electoral reform, and would extend the growing Commonwealth role in providing election observers.

There is also considerable scope for encouraging more enlightened attitudes through, for example, bilateral legal, police and media exchanges, and these could be extended to include the army and administration of indigenous peoples and other minorities. Such exchanges might show a way to make progress on resolving in practical ways the dilemma of how to give greater expression to universal aspirations without repeating the histories of cultural domination. Measures to improve court systems, for example, or to reduce arbitrary, destructive intervention in individuals' lives, can demonstrate the interrelationships between political/civil and social/economic rights in such a way that discussion between officials can rarely do, and so help put to one side fruitless arguments about which kinds of human rights have priority. We should also not assume that we would have nothing to learn from this kind of collaborative exchange.

Having the broader range of complementary tools that this sort of approach implies - that is, encouragement and practical assistance as well as criticism - should allow action on human rights to be more closely tailored to particular conditions. Institution-building measures can broaden the base of contact a community has with ideas and ways of doing things that promote respect for, and enjoyment of, human rights so that it is not only ministers and officials who have regular contact with human rights standards and their practical application. Institution-building measures can also provide sectors within a community with tools to push for change internally. The issue of identifying common values without trampling on cultural sensitivities can also be more directly tackled in the context of working together on, for example, legal processes in Vietnam or the humane delivery of birth control in China.

To give substance to some of the ideas I have canvassed today, I have directed my Department and our diplomatic missions overseas to identify human rights priorities and the means which would work against identified abuses, including institution-building measures and joint action with like-minded countries. Cataloguing what Australia already does in the direction of institution-building, for example in aid and exchange programs,

will be an important element of this. We will then be in a better position to judge how the priority accorded to human rights objectives might be raised even further within ongoing government activities. Some aid and exchange programs, for example, already have a clear human rights dimension: for instance, the provision of Tibetan language textbooks in Tibetan minority areas.

If necessary, other government activities could be modified to ensure that they serve - or at least do not work against - human rights objectives. Military training programs, for example, should ideally include a component on military law and exclude training in techniques which could be used against civilian populations. By way of parentheses, let me point out that while we have demonstrated that we are prepared to cut off defence cooperation with governments which have perpetrated particularly gross abuses of human rights, such defence cooperation - especially training - is one of the few means we have to influence these armed forces' attitudes to human rights. Quite apart from formal training of military personnel in legal or other human rights matters, greater sensitivity to human rights issues can grow from exposure to societies and armed forces which do place importance on them. I am wary therefore of the knee-jerk reaction to any report of human rights abuse that we should immediately cut off defence cooperation. We need to consider the likely consequences of any particular measure.

As a further example of possible new directions for government action, my Department's Special Visitors Program could target visitors from sectors such as the media or the legal or penal systems. State and Federal government legal exchanges with other countries could extend beyond trade and commercial law, and similarly, State and Federal police could include, say, training in the presentation of evidence within their exchange programs.

Where feasible, the work of overviewing and building on activities already in train could be extended to the programs of non-government bodies such as LawAsia or the International Commission of Jurists. At the very least, these bodies could assist in the identification and targeting of programs relevant to their expertise. I am, for instance, aware of LawAsia's proposal for a Pacific Court of Human Rights. While this particular proposal may be somewhat ambitious, Australia has long supported the formation of a regional body for the protection of human rights, of the sort that exists in other parts of the world. It is pleasing that other countries in the region, including Indonesia and the Philippines, have now begun to promote this idea.

The Government's human rights policy has in large part grown from Australian community values. It is therefore important that a wide cross-section of the public remains in touch with and broadly supportive of the policy. While links between my Department and human rights interest groups are good, some relevant sectors of the community may have little understanding of the policy or of the need for it. I am certainly willing to meet, for example, with business people dealing with Asia or bilateral chambers of commerce to

explain our human rights policy.

Such efforts will also be assisted, I believe, by such things as the production of a handbook of government human rights policy and the reasons for it, setting out the international legal context and establishing guidelines on the kinds of programs which could assist specific human rights objectives. My Department has started work on such a handbook and it will, of course, be publicly available when published. The Department is also examining the possibility of offering training courses, both for our own officials who deal with human rights cases overseas and also for training officials from overseas countries, to give them a clear grasp of human rights policy objectives and instruments.

I should mention finally - not least because in the current budget discussions I am very conscious of where government resources are allocated - that our international human rights activities require significant Departmental resources, in Canberra and at posts. In some posts it is a major professional preoccupation. I want to maintain that effort, and at the high standard at which it is currently performed.

I realise that speaking to a group such as this falls very much into the category of preaching to the converted - and perhaps even to a few fundamentalist zealots! You are as well aware as I am of developments in the various international forums on specific aspects of human rights protection. I have thus sought to concentrate instead on perceptions of human rights in the post-Cold War world, and the capacity of the Australian Government to respond positively to changes in those perceptions.

It is a complex challenge which the Government - and I personally - look forward to meeting, not just with strong words and firm action, appropriate as these may be on occasion, but with whatever action is likely to be most effective in the particular circumstances. I look forward to a continuation of your support.
