

## AUSTRALIA'S HUMAN RIGHTS DIPLOMACY

Address by Senator Gareth Evans QC, Minister for Foreign Affairs, at Award of Human Rights Law Prize, Melbourne, 8 September 1994

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Human rights law was unknown as a discipline when I was a law student in the 1960s, and wasn't much better appreciated when I tried to sneak it in around the edges of the constitutional and administrative law courses I was teaching in the 1970s. But times have changed. Courses in human rights law are now being offered by most law faculties around Australia - and what's more, have become one of the most popular elective courses among undergraduate and graduate students.

The Human Rights Law Prize sponsored by the firm of Lucas Baron through Melbourne University reflects this tremendous, and growing, interest. It has gone from being a Victorian competition to a national one in only a few years and is attracting essays of outstanding merit. Many of this year's entries - not least that of the winner, Alice Palmer, on the subject of asylum-seeker detention - are likely to make a valuable contribution to public debate and understanding on human rights issues in Australia. I would like to commend all those students who submitted essays, and both Lucas Baron and Melbourne University for the work they have done in raising the profile of human rights law through this prize.

The role which governments seek to play in promoting human rights observance is subject to intense, but not always clear-headed and value-free, examination by the press and a number of other sections of the community. This is understandable. Human rights issues involve real people in often distressing situations, and, by their nature they raise emotional issues, and incline people to be judgmental about government actions, to weigh them exclusively against some kind of moral rather than policy scale. Any government's handling of human rights issues constantly requires a fine balance between, and judgment about, when to act and how to act, and how forcefully and publicly to act. As I hope most of you would agree, these judgments are ones about which perfectly reasonable people are bound to differ from time to time - and about which unreasonable people are often able to have a field day.

I would like to take this occasion tonight to try and broaden the understanding that exists in Australia of the present Government's human rights policy, and deal squarely with some of the misconceptions which, now and again, acquire new vigour: for example, that in pursuing our policies we tend to be selective or inconsistent, or that we are prepared to compromise on human rights or allow them quietly to drop off the agenda whenever other national interests - particularly commercial ones- are at stake. Let me at the outset state as clearly and as unambiguously as I can that we do have a strong commitment to the fundamental human rights and freedoms set out in the Universal Declaration and subsequent Covenants, and are not reluctant to argue in defence of those rights, consistently and forthrightly, whenever and wherever we see them at risk.

### The Universality of Human Rights

In the aftermath of the horrors of World War II, the community of nations - reassembling as the United Nations - indicated in the clearest possible terms that the promotion of human rights was to be made one of the cornerstones of the new international order. In simple but eloquent language, which still resonates powerfully five decades later, the Preamble of the UN Charter set out the determination of the peoples of the world "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women", as well as the "promotion of social progress and better standards of life in larger freedom". In the half century since then, the nations and peoples of the world have gone on to develop a complex and viable system of principles, legal regimes and machinery to promote human rights and protect groups and individuals from disadvantage.

The scale of human rights violations that unhappily continue to occur often provokes despair, a sense that the world is incorrigibly insensitive to the rights of its citizens, that governments are weak and that efforts to promote human rights will, in the end, be futile. But there have been improvements in human rights standards and conditions over the years which should serve to confirm, and spur on our commitment. Political developments in Latin America, Eastern Europe, Central Asia and now South Africa have brought fundamental freedoms to millions. Colonialism is a thing of the past. Racism is everywhere challenged. And the rights of women and of indigenous peoples are acknowledged and promoted to a greater extent than they have ever been. Human rights are now recognised as an integral part of national and international activity, and international scrutiny of a country's human rights performance is generally

regarded as legitimate. Indeed, world attention and activity on human rights is on a scale unimaginable fifty years ago. But we are of course insistently reminded of just how much more remains to be done. The bloody brutality of Bosnia, and the horrifying genocide in Rwanda, are only the most recent compelling reminders of the need for the international community to grapple with the problem of human rights at the most basic levels of all.

Defining 'human rights' has kept philosophers busy for centuries, and defining the particular human rights which the international community should have some responsibility to advance and protect has kept lawyers, politicians and diplomats busy for decades. The 1948 Universal Declaration of Human Rights and the two 1966 Covenants on Civil and Political Rights (ICCPR), and Economic, Social and Cultural Rights (ICESCR) - which together make up what is often called the International Bill of Rights - sought to define the proper scope of international human rights concerns once and for all.

But the competing ideologies of the Cold War ensured that for a generation the international human rights debate was stalemated in an ultimately sterile dispute over whether "liberal" civil and political rights or the more "collectivist" economic and social rights should be accorded primacy. A sub-set of the argument, which has still had resonance in the post-Cold War world, is the cultural relativist approach pursued by many developing countries - portraying human rights, and particularly civil and political rights, as Western liberal constructs of little relevance to non-Western societies. Even though the overwhelming majority of States have adopted the two Covenants, and even though the customary international law status of key elements of the Universal Declaration has long been acknowledged, this has not prevented states from engaging in endless debates on which of these rights should have priority - or, sometimes more subtly, which should be first among equals.

It is to be hoped that these issues have at last been laid to rest once and for all by the Vienna World Conference on Human Rights last year: the 1993 Vienna Declaration, emerging from that Conference after a long and tortuous process of negotiation, clearly reaffirms that all human rights are equal and indivisible, and that there is no hierarchy of rights. Moreover, governments of the world affirmed at the Vienna Conference that cultural differences could not be used to justify abuses of human rights:

While the significance of national and regional particularities and

various historical, cultural and religious backgrounds must be borne in mind, it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

What this means is that human rights, people and governments around the world are inextricably interrelated. Human rights apply to everyone, and all states have the obligation to promote and protect them.

It is interesting to find that governments that abuse human rights rarely reject the applicability to them of the provisions of the Universal Declaration: their usual defence is to deny that abuses occur, thus implicitly acknowledging the validity of the provisions. The reality is that there is no significant value or cultural system anywhere in the world which does not aspire - at least publicly - to increase respect for human life and freedom from fear and want. If it is accepted that the life, health, dignity and worth of individuals is not a purely Western preoccupation but a truly universal one, then it is incumbent on every country's government to recognise that it is obliged to defend these rights. Urging respect for human rights is not a matter of patronising Western cultural imperialism; it is a universal obligation.

### Australia's Approach to Human Rights

Why, nonetheless, it might be asked as a matter of *real politik*, should governments bother to pursue these rights in the international arena, given that such issues are always likely to be sensitive in the country the subject of attention, and that even their successful pursuit is likely to be marginal to one's own country's strategic, political and economic interests? One answer is that for a country like Australia, human rights policy involves an extension into our foreign relations of the basic values of the Australian community: values at the core of our sense of self, which a democratic community expects its government to pursue. Another is simply that governments like ours believe that a moral obligation is its own justification, and that a commitment to good international citizenship demands no less than acting to help secure universal adherence to universal rights.

But the pursuit of human rights in this way need not be entirely selfless. An international reputation as a good international citizen on these issues probably can be helpful to a country in pursuing its other international interests. But, more

importantly, there is a real sense in which, by embracing the cause of those who have been denied their rights, we also guard and reinforce the nature of those rights themselves. The historical record shows clearly enough that rights not defended are rights easily lost.

We have long acknowledged that human rights lie at the heart of stable and tolerant societies, which in turn provide the cornerstones for a stable and peaceful international order. But the recent horrors of Rwanda and Bosnia have forcefully reminded us that - as the drafters of the UN Charter and the Universal Declaration knew only too well from bitter experience - peace and stability are very much dependent on the observance of human rights.

If the international community is serious about addressing the incidence and brutality of modern conflict, in particular conflict within states, it must be prepared to recognise that security in the post-Cold War period is as much about the security of people as about the integrity of borders and the security of states. This will require acknowledging that a country which systematically disregards human rights, ignores the rule of law and fails to strive for equitable development and distributive justice is showing the clear symptoms of a state heading towards breakdown and civil strife, often on the verge of unleashing the demons of ethnic and religious hatred. It is time for the international community to recognise that strategies, both international and internal, to ensure the observance of human rights have a preventive security dimension, and should be seen as just as much part of the international security repertoire as preventive diplomacy, peace keeping and - in extreme cases - peace enforcement.

So much for why Australia seeks to promote internationally recognised human rights. How do we - and should we - go about achieving that goal?

Many Australians concerned about human rights abuses overseas feel it necessary to give immediate and robust expression to their strength of feeling, and regularly demand that their Government does likewise. This is a natural reaction, and on occasions strong public statements are what is required. And there are other occasions when nothing less than sanctions - whether military, economic or human contact related - have been required: particularly where a united approach by the international community has made such pressure reasonably likely to bear fruit. However there are a great many situations where such measures are more likely than not to exacerbate the problems in question, and at the same time reduce any influence governments may have in helping the people they are trying

to help. Governments always have to take into account the consequences of their actions: we don't have the luxury of being able to indulge only our emotions.

Australia's policy approach in recent years to the pursuit of our human rights objectives can most succinctly be described as based on a combination of principle, pragmatism and patience:

- *Principle* means taking seriously the universality of the values set out in the Universal Declaration and reaffirmed at Vienna last year. As I have already made clear, we subscribe to the view that concern for values such as life, health and the inherent dignity of all individuals is, and should be, a universal preoccupation. 'Principle' also means promoting all human rights equally, resisting any purported hierarchy, and maintaining an absolutely consistent and non-discriminatory line, whatever the character of the country in question or the nature of our political and economic relationship with it.

- *Pragmatism* means simply pursuing human rights in a way which is the most productive. Being influential in achieving human rights objectives requires being aware of the totality of issues which make up any particular bilateral relationship, and being able to put those human rights issues in a context which is not seen by the other country as one-dimensional or out of proportion to the other elements in the relationship. We have become acutely aware over the years that, particularly when dealing with sensitive issues in Asia, what matters is not so much what is said, but how it is said. This may require systematically pursuing quiet dialogue and persuasion in the context of broad multi-dimensional relationships, rather than noisy drum beating, however much gratification that might generate at home. At the end of the day, what is crucial is not what makes us feel good, but what enables us to achieve progress for those about whom we are professing concern.

- *Patience* essentially involves recognising that many of the problems that exist with civil and political rights in developing countries, particularly in Asia, are likely to be transient in nature. Economic liberalisation will necessarily drag political liberalisation along in its wake - as economic growth loosens authoritarian levers over employment and income; as it expands trade, travel and access to foreign information; and as it produces a better educated and more self-confident population more willing to make

organised demands for less corruption, more free speech, and - sooner or later - more political participation. Recognising the inexorability of such progress does not, however, mean not taking any action to help accelerate the process. If countries feel confident enough - or are encouraged from the outside - to make the change to political liberalisation, and can do so in less than one or two or three generations, then so much the better.

### Australia's Human Rights Diplomacy

Against this background, the Australian Government employs a wide range of strategies - both bilateral and multilateral - for carrying forward its human rights policies. We over and over again raise particular cases with other governments, based on the best and most credible information available. We try to engage in systematic dialogue, through expert delegations and the like with those countries in our region who have a troubled human rights history. We make clear our willingness to expose to international gaze our own efforts to grapple with some intractable human rights concerns, including those associated with our own indigenous people. We make public statements in Parliament, the media and international forums to help bring international pressure to bear on governments that commit gross violations of human rights. We work assiduously to shape and promote international human rights treaty regimes. We try to encourage the establishment in other countries of effective national human rights institutions.

Let me add just a little more detail about some of these activities, because I don't think their scale is at all well understood.

In terms of bilateral representations, Australia is probably one of the most active countries in the world. This year alone, the Australian Government has so far made 319 representations. In 1993 we raised 534 individual and group cases with ninety countries in all regions, in addition to our pursuing cases from previous periods. Since 1987, when my Department first started maintaining a register of human rights representations, the Australian Government has raised over 3000 individual and group cases. Such representations are undertaken at all levels of government, from the Prime Minister down, as well as through normal diplomatic channels. Most of the cases we take up have been referred to the Government through a unique arrangement with the Amnesty International Parliamentary Group, while many other cases are brought to our attention by diplomatic and media reporting, as well as by concerned individuals and groups in the community.

Our bilateral efforts are reinforced by an activist multilateral human rights agenda. Both in the UN Commission on Human Rights and through the General Assembly, we have sought to ensure that all states adhere to existing human rights standards; that the UN pursues violations of human rights; that the UN's human rights machinery is effective; and that appropriate new human rights standards continue to evolve - eg the work to which we are now contributing on a Declaration on the Rights of Indigenous Peoples. We have promoted improved staffing and funding of the UN's human rights program and will continue to do so. We have consistently worked for new and more effective UN human rights mechanisms, including most recently through our support for the establishment of the office of the High Commissioner for Human Rights. Last year, we made a substantial contribution to the UN Voluntary Fund for Technical Assistance, used to support national human rights infrastructures which contribute to human rights awareness and education, and the administration of justice. Australia's commitment to these goals and our energetic and constructive approach has earned the respect of other countries and of NGOs from all regions.

With our Human Rights and Equal Opportunity Commission, the Government has worked assiduously to promote the establishment of national institutions for the promotion and protection of human rights, on the basis that positive action at the national level is the surest means of improved human rights observance. We have provided advice to Indonesia, Thailand, Latvia and Russia, to name a few, and while there is still a long way to go, it is significant that human rights commissioners have been appointed in Indonesia and India, and that Papua New Guinea has recently announced it will follow suit.

Much of this multilateral activity - on national institutions and technical assistance - is practical and preventive in nature, aimed at bringing about changes in attitudes that will prevent future acts of human rights abuse. Similarly, Australia's aid program, as part of a coordinated and integrated foreign policy, also makes a real contribution to the protection and promotion of human rights in our region. Some of our activities focus specifically on human rights, while all others have the potential to further economic and social rights, including the right to work and the right to development. Every effort is made in the development and design of our aid projects to take account of human rights issues, participatory development and good governance - all of which are fundamental to the sustainability of development programs.



## International Obligations and Domestic Law

I should add, finally, a word about Australia's human rights treaty obligations and their impact on domestic law. My starting point is a firm belief that the United Nations human rights treaty system is one of the great achievements of the international community of the post-War period, one which provides a clear standard to which all states should aspire and to which all states should be held accountable. It has set standards which have changed the world's perceptions of the value of human life, and which are central to the international community's pursuit of "better standards of life in larger freedom".

There can be no question that Australia's own interests clearly lie in securing a strengthened and respected international human rights treaty system. This is why we work both for the widest possible adherence to these instruments and for effective compliance by all, and why we strive for the improved efficiency and effectiveness of the treaties' monitoring and individual complaints processes. But we cannot expect the benefits of such a system to be delivered free of obligation to its members. We, too, must ensure that our own standards conform to those that we and the international community have agreed are fundamental to human rights observance. We must be prepared to open ourselves to the same scrutiny we demand of others. Our credentials to comment with authority on the performance of others will inevitably be affected by our own compliance, and indeed by our willingness to be seen to be complying.

No country is completely free in conscience and deed from human rights abuse; all must work together toward better standards of behaviour. By acknowledging shortcomings and opening itself to outside inspection and criticism - as we have done in Australia - a government can promote the sort of healthy dialogue on human rights which is the strongest basis for achieving progress in the long run.

The conflict between our obligations under the ICCPR and Tasmania's intrusive sexual practice laws is therefore an important test for Australia. But we should be clear about the issues at stake. It is not about the undermining of Australian sovereignty by a faceless UN body: Australian sovereignty is exercised solely and squarely by duly-elected Australian governments, and the implementation of treaty obligations as Australian law is a matter solely and squarely for duly-elected Australian Parliaments. The Covenant, like the Universal Declaration before it, provides expressly for the right to privacy. We must uphold that right if we are to have credibility internationally as a defender of human rights. To do

otherwise would do little justice to the honourable role which successive Australian Governments have played in securing the observance of human rights internationally, and undermine our capacity to act as effectively internationally in the future.

The Opposition and some States have talked as though "States rights" should take priority over human rights. When that argument is heard in international forums, when abuses of fundamental human rights are being discussed, it is usually the abusers who are speaking. The ICCPR offers protection to our own citizens, as it does to all the citizens of the world. Our own Constitution unequivocally enables the Commonwealth Government to give effect in domestic law to the standards set out in the ICCPR, and we should not hesitate to rely upon it to legislate accordingly.

The Tasmanian case is just one instance in which we see the continuing interaction of domestic and international human rights activity. Australia has an obligation as a good international citizen to promote improved standards internationally, and to implement international standards domestically. We also have an obligation as a responsive government in a democratic society to maintain close contact with the Australian community, so that its concerns and aspirations are well reflected in the Government's activity. As a Government, we will continue to meet these obligations unequivocally.

We believe in the universality and indivisibility of human rights, and see them as providing governments and their peoples with "the quintessential values through which we can affirm together that we are a single human community", to use the words of the UN Secretary-General. We will continue to work in ways which put effectiveness above rhetoric, and emphasise a constructive approach to dialogue and institution building. And we will maintain our resolve to promote human rights with absolute consistency in all available forums, without double-standards.

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