

Human Rights: Fifty Years and On

BY GILLIAN BIRD

In this year, 1998, as we mark the fiftieth anniversary of the Universal Declaration of Human Rights, it is important to recognise the impact the Declaration has had and continues to have, on peoples all around the world, regardless of race, sex, culture or religion. What is equally important is that the beliefs inscribed in the Universal Declaration were not invented fifty years ago. They have been with us for centuries. The earliest philosophical thinkers espoused them. Every great religion teaches them. That is why the Universal Declaration can claim rightly to embody a set of universal principles - principles that apply equally to all human beings.

The Universal Declaration was adopted in 1948, in part to fulfil a requirement in Article 13 of the UN Charter which calls on the General Assembly to initiate studies and make recommendations for the purpose of "assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion". Australia can be proud of the key role played by our then Foreign Minister, Dr Evatt, in ensuring that respect for human rights was placed alongside peace, security and development as the primary objectives of the UN. In recognition of Australia's efforts in championing human rights in the newly established UN, we were included in the eight-member committee charged with drafting the Universal Declaration. Moreover Australia, in the person of Dr Evatt, presided over the General Assembly when the Declaration was adopted by the United Nations in 1948.

The international community wasted no time in giving effect to the human rights commitments in the UN Charter: the Universal Declaration of Human Rights was one of the first major achievements of the United

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Nations. Indeed, it was the first time that human rights and fundamental freedoms were set forth in such detail in a single document.

After fifty years the Universal Declaration remains a powerful instrument which continues to exert an enormous effect on lives all over the world. Although not legally binding, it carries immense moral force. It is rightly regarded as the foundation of the international human rights system. Its adoption prompted a sustained and intensive series of negotiations which have seen the drafting and adoption of a set of international instruments which today form a significant body of international law. These include the two basic Covenants, on civil and political rights, and on economic, social and cultural rights - which, together with the Universal Declaration, form the Universal Bill of Human Rights - as well as other international legal instruments dealing with issues such as freedom from torture and racial discrimination, and the rights of women and children.

This year, 1998, is not only the fiftieth anniversary year of the Universal Declaration of Human Rights. It also marks the five year review of the Vienna Declaration and Program of Action agreed on at the World Conference on Human Rights in 1993 by Australia and 170 other countries. The Vienna Declaration reaffirmed the international community's commitment to the purposes and principles contained in the Universal Declaration of Human Rights, and in particular the universality, indivisibility and interdependence of all human rights, thus providing clear guidance for promoting and protecting all rights - civil, political, economic, social and cultural. The commemoration of these two events has a special significance given the interrelationship between the Universal Declaration and the Vienna Plan of Action: if the Declaration is the foundation on which the UN's human rights goals are built, then the Vienna Plan of Action charts the course for the international community into the next century by providing a framework of principles and a program of activities for achieving these goals.

This is a time both to reflect on the achievements in developing and maintaining this international human rights system, and to consider what is still required to consolidate and further develop it. As stated by the Prime Minister, the fiftieth anniversary is an opportunity for all of us to reinvigorate efforts to ensure that human rights are enjoyed by all people in all countries. He has also pledged that Australia will continue to do all it can to promote and protect the rights enshrined in the Declaration to ensure they become a reality throughout the world.

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While much has been achieved in the five decades since the adoption of the Universal Declaration of Human Rights, it is clear that respect for all the rights articulated in the Declaration is far from universal. The Universal Declaration will not be able to deliver its promised vision for the world if it is not implemented in a practical and coherent way.

Over the past fifty years, the UN has created an elaborate system of mechanisms to advance human rights, as well as to deal with violations of human rights as they occur. The treaty body system which underpins the UN's human rights mechanisms is an impressive body of international law. Today we have international laws which defend our basic right to life and the right of freedom of expression; laws which address the rights to work and to a decent standard of living, health and education; laws which advance and protect the rights of women and children; and laws which ensure the proper treatment of people regardless of race.

A recent major achievement was the adoption by the Rome Diplomatic Conference in July 1998 of a statute to establish an International Criminal Court. Australia played an active and constructive role throughout the negotiating process. The Court's establishment is one of the Australian Government's prime multilateral and human rights objectives. In welcoming the adoption of the Court's Statute, Australia's Minister for Foreign Affairs, Mr Downer, noted that "the creation of an International Criminal Court was a great victory for those who had fought long and hard to ensure that the perpetrators of the most heinous crimes against humanity would not be able to act with impunity".

We still have some way to go in developing this network of international law. There still exist gaps in international law in important areas such as according full protection for children from sexual exploitation and participating in armed conflict. Negotiations are currently proceeding in two working groups to elaborate optional protocols to the Convention on the Rights of the Child to fill these gaps. Australia is participating in both these working groups.

We also need to give adequate protection to the defenders of our human rights - those who often put their lives on the line to protect others - whether they be individuals, groups, NGOs, lawyers, or anyone committed to the promotion and protection of human rights and fundamental freedoms. Australia welcomed the adoption this year by the Commission on Human Rights of the Declaration on Human Rights Defenders, and looks forward to its adoption by the General Assembly on 10 December

1998. This would be an apt conclusion to the celebrations marking this "human rights year".

A key element in the UN's human rights system is the way in which it makes states accountable for meeting their obligations as parties through a monitoring system provided for in the six key treaties. Monitoring is undertaken by committees of independent experts whose key task is to examine periodic reports on implementation which parties are obliged to provide. Some of the committees have additional mandates to seek information from parties or to hear complaints from their citizens.

The first human rights instrument to establish an international monitoring system was the Convention on the Elimination of Racial Discrimination, adopted by the UN General Assembly in 1965. This convention not only defined and condemned racial discrimination, but also committed States to amend policy which creates or perpetuates racial discrimination. The Convention's monitoring mechanism - the Committee on the Elimination of Racial Discrimination - was subsequently established in 1969 when the Convention came into force.

The two Covenants dealing with economic, social and cultural rights, and civil and political rights also have monitoring bodies. The monitoring body of the International Covenant on Civil and Political Rights - the Human Rights Committee - is mandated not only to study reports from State Parties but also to consider complaints from one State against another or from individuals. But the monitoring body for the International Covenant on Economic Social and Cultural Rights, the Committee on Economic, Social and Cultural Rights, which was only established some ten years after the Human Rights Committee, does not have a mandate to consider complaints. This inconsistency has been the subject of international debate over the years, but it needs to be remembered that the Universal Declaration itself makes no distinction between civil and political, and economic, social and cultural rights. And that is precisely Australia's position. Australia's human rights policies are based on the universality of all fundamental human rights - civil, political, economic, social and cultural. We have consistently rejected the view that there exists a hierarchy or priority of rights. As far as Australia is concerned, all rights in the Universal Declaration are closely inter-related, inter-dependent and, above all, indivisible.

Three subsequent conventions also established treaty monitoring bodies: the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and other Cruel, Inhu-

man or Degrading Treatment or Punishment; and the Convention on the Rights of the Child.

Apart from this formal system of monitoring States' compliance, special procedures such as working groups, special rapporteurs and special representatives of the UN Secretary-General are called upon to deal with burning issues as they arise. Australia has supported these arrangements as we see them as valuable tools to be used in the protection and promotion of human rights internationally.

Despite this impressive and ever-evolving body of international human rights instruments, we need to remember that the protections embodied in these instruments can only be fully realised if they are universally and fully implemented. The more effective and widespread the implementation of these instruments, the greater the protections to each and every individual. The real challenge facing us therefore is not only to continue developing the human rights system, but to do the less eye-catching but, if anything, more important work of ensuring that existing instruments and mechanisms work as effectively as possible.

However, as Professor Philip Alston (the Australian chair of the ESCR Committee) pointed out in a major report in 1996, the treaty monitoring system is experiencing serious difficulties. At the time of his report, 957 national reports under the 6 human rights treaties were overdue, thus leading to serious concerns about the ability of the treaty bodies to perform their monitoring role. Of equal concern was the fact that if all overdue national reports were submitted today, the Committees would not have the time or resources to deal with them expeditiously. For example, it has been estimated that it would take the Committee on the Elimination of Racial Discrimination twenty-four years to examine all its reports while the Committee on the Elimination of Discrimination against Women would require twenty-one years. If the burden of preparing reports is resulting in countries like Australia being well behind in meeting their obligations, and, even when submitted, the reports are not considered until they are well out of date, then the effectiveness of the system is severely compromised. Professor Alston's suggestions for improving the system focused on a streamlining of the reporting requirements both to encourage greater compliance with the obligation and to make the reports easier for the Committee to manage. Reducing the workload of the Committees in this way would enable them to deal with reports much more quickly, to identify problems promptly and assist parties in developing appropriate ways of dealing with them within a realistic timeframe. While Australia, along with Canada and New Zealand, has been championing this proposal, it

has not yet been accepted by many State Parties. But we will continue to push the issue.

Australia has also supported the efforts of the UN Secretary-General and High Commissioner for Human Rights to promote an integrated system-wide approach to the UN's human rights activities. The link between democracy, development, peace and human rights has been demonstrated time and again by global events - be it the situation in Cambodia or the internecine conflict of the Balkans. To promote mainstreaming of human rights across the UN system, the Office of the High Commissioner has been given the task of assessing the work carried out on human rights issues in the four Executive Committees of the United Nations - dealing with peace and security, economic and social affairs, development cooperation, and humanitarian affairs - and to participate regularly in every stage of the UN's activities in relation to actual or potential conflicts, or post-conflict situations. This approach has already been reflected in the increased cooperation and coordination between the Office of the High Commissioner for Human Rights and the United Nations Development Program, thereby enhancing the human rights aspects of this program which focuses on poverty elimination, the promotion of good governance and democracy.

We also see scope to improve the functioning of the UN Commission for Human Rights, the pre-eminent multilateral human rights forum. The current Chairman of the Commission, Ambassador Selebi of South Africa, launched an initiative to review its agenda and procedures with a view to eliminating unproductive activity. Australia has been a keen participant in this process. In relation to human rights, as for other international issues, our preference is for cooperation rather than confrontation, and we make no secret of the fact that we regard a confrontational approach as frequently unhelpful and unproductive. As was seen at the 1998 session of the Commission, a good deal of its work, and the great majority of its resolutions and decisions, proceed on a consensus basis, with States making considerable efforts to accommodate a diversity of views. That said, there will always be occasions, particularly in a forum dealing with such sensitive issues, when consensus proves either impossible or meaningless, and the differences among States must be registered if the credibility of the Commission is to be preserved. But we hope that the greater degree of commonality of purpose evident in 1998 will become the norm.

Australia has a clear national commitment to the ratification and implementation of the human rights treaties. We are a party to all six key hu-

man rights instruments, as well as to the two optional protocols to the International Covenant on Civil and Political Rights. As in any country, this is an ongoing and evolving process. As States sign and ratify instruments these need to be incorporated into domestic laws, consolidated within their institutions, and finally absorbed into their society and culture.

As well as our commitment to human rights domestically, Australia also has a strong commitment to assist other countries, particularly those in our region, to accept and meet human rights norms. We have sought to do this by taking opportunities, whether in bilateral contexts or multilateral forums, to promote the ratification of major international human rights instruments, as well as by providing guidance on and assistance for their implementation. Australia is also playing an increasingly active role in providing support to domestic institutions in countries where civil society and the rule of law are still underdeveloped. The government funds a range of training programs which seek to enhance those common elements in society which are vital to the democratic process, such as courts, police, parliaments, the media and national human rights institutions.

National institutions are a good example of how culture can be used to promote human rights. These institutions, established in conformity with international human rights standards, and taking into account different national circumstances, are one of the most practical and effective vehicles for the promotion and protection of human rights. A key strength of such institutions is their ability to reflect to a significant degree the different culture and local conditions of the societies in which they are established, while at the same time remaining faithful to international human rights standards. By being able to deal with issues with a sensitivity for local conditions that only a local body can have, and with a competence for finding solutions which, again, no outsider can easily replicate, these bodies make potent human rights advocates at the national level. They also have the added advantage of taking away the government's option of using national sovereignty arguments, which they may resort to when criticism or suggestions come from abroad.

For all these reasons, Australia has endeavoured to assist countries in their efforts to establish and strengthen these bodies. For example, we recently provided AUD 2 million to the Indonesian National Commission on Human Rights. When the former Suharto Government decided to establish the Commission in 1993, there were cries of scepticism from some who doubted the Commission's ability to maintain its independence and effectiveness when confronted with a multitude of human rights issues. It

has, however, disproved the sceptics and is a striking ambassador for national human rights institutions in our region, conducting investigations, spreading human rights education, and hosting conferences on topical human rights themes.

Australia also supports the establishment and operation of regional arrangements on human rights. The government has contributed \$275,000 since 1996 to finance the establishment and operation of the secretariat to the Asia-Pacific Forum of National Human Rights Institutions. This body, established in Darwin in July 1996, has become a vibrant, collegiate force in the regional human rights system, and an example of how institutions from countries with different cultural and religious backgrounds can work together in the pursuit of universal human rights goals. Australia also participates actively in the UN's annual workshop on Asia-Pacific regional human rights arrangements, the long-term objective of which is to transcend regional particularities and establish a bona fide human rights mechanism in this part of the world.

In conclusion, it is worth noting that the committee charged with drafting the Universal Declaration comprised eight people who represented a good cross-section of cultural and religious traditions, and had different patterns of socio-economic development. Apart from Australia, the committee included representatives from Chile, China, France, Lebanon, the then Union of Soviet Socialist Republics, the United Kingdom and the United States of America. The Declaration is well equipped to stand the test of time because the drafters of this document sought to embody in it rights which are foreign to no culture and native to all nations. In our dealings with other countries, this fundamental truth has been revealed again and again. As people around the world gather to commemorate the fiftieth anniversary of the Universal Declaration, the world community has a salient opportunity to remind itself that human rights are the foundation of human existence and the basis for co-existence.