

FOREWORD

THE HON ELIZABETH EVATT AC*

A symposium devoted to human rights is a welcome contribution to the discussion of these difficult and important issues. One of the greatest challenges we face in the coming century is to narrow the gap between the aspirations expressed in human rights instruments, such as the Universal Declaration of Human Rights,¹ and the realities of millions of lives blighted by poverty and disease, by violent conflict and by oppressive government. The idealism of the Universal Declaration is mocked by the vast disparities between the lives of those born into affluence and relative freedom and those millions whose horizons are limited and who have no chance of improving their situation; it is women and children who all too often bear the main burden of this poverty and deprivation.

To make human rights effective, it is essential to strengthen the international rule of law, and to ensure that states accept accountability for their human rights record by making their legitimacy depend on this. It is also necessary to work for the goals of global justice, and to overcome the unacceptable gap in living standards resulting from the concentration of economic power in the developed nations and their global enterprises, a gap which drives ever growing waves of people to seek a better life elsewhere.

Several of the articles in this symposium focus on domestic implementation of human rights. Making human rights effective in one country does not resolve world problems, but it can serve to reinforce the respect shown for international human rights instruments. States which take seriously their international obligations contribute in this way to the development of an international rule of law.

How does Australia rate in this context? Australia was for many years a strong supporter of the United Nations. Australia contributed to the drafting of the UN human rights instruments and is a party to nearly all of those instruments. Advances made by Australia in the domestic protection of human rights, particularly in the field of protection against discrimination, have come from the ratification of instruments such as the *International Convention on the Elimination of All Forms of Racial Discrimination*² and the *Convention on the Elimination of All Forms of Discrimination against Women*.³ Our laws on disability discrimination and protection of privacy reflect international standards. High

* LLB (Syd), LLM (Harv); Judge, World Bank Administrative Tribunal; former member of the United Nations Human Rights Committee (1993–2000).

¹ GA Res 217A, 3 UN GAOR (183rd plen mtg), UN Doc A/Res/217A (1948) ('Universal Declaration').

² Opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969).

³ Opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981).

Court decisions such as *Mabo*,⁴ *Teoh*⁵ and *ACTV*⁶ show the influence of fundamental human rights principles on the development of our law.

Despite this progress, there remain important deficiencies in the protection of rights in Australia. Among these are the failure to resolve the many complex human rights issues affecting Australia's indigenous people, notably the recognition of self-determination and reparation for the stolen generation. There is also the failure to ensure that persons who reach our shores in search of asylum are treated with humanity and respect for their inherent dignity.

A new threat to rights in Australia followed the horrifying events of 11 September 2001. Despite the absence of a specific threat to Australia, the anti-terrorist legislation put forward by the government seriously encroached on rights and freedoms. Although later modified to some extent, the fact that such legislation could be contemplated demonstrated the need for more effective legal protection of rights in Australia. The cynical exploitation of September 11 to further erode the remaining legal protections of asylum seekers (and incidentally to give a green light to a wave of racial vilification and racist violence) is a further cause for concern and negates our claim to be a compassionate society.

Australia has specific obligations under the UN instruments to respect and to ensure rights. It has been found to be in violation of those obligations several times by the independent treaty monitoring bodies. However, the views of the supervisory bodies are not binding and depend on state cooperation and respect for their effectiveness. Australia has chosen to reject their views. This leaves the victims of violations without remedy, as the rights at issue cannot all be enforced in Australian courts. Successive governments have failed to enact them through a bill of rights or otherwise.

The papers include discussions of how countries such as Canada and the United Kingdom provide for the protection of human rights in their domestic jurisdictions. The contrast with Australia is marked. Australia is alone among countries of similar background in its failure to provide effective remedies for all violations of rights. The potential for a bill of rights in Australia is another topic considered. Such a move would ensure that all institutions of government were committed to respect human rights and to ensure that abuses were prevented or corrected. It would be a valuable protection against abuse by legislative or executive action.

The recent ratification by Australia of the *Rome Statute of the International Criminal Court*,⁷ and the enactment of new laws on genocide, crimes against humanity and war crimes are certainly positive moves.⁸ But those steps do not advance the legal protection of rights under other instruments, and need to be set against Australia's refusal to ratify the *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* which adds an

⁴ *Mabo v Queensland [No 2]* (1992) 175 CLR 1.

⁵ *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273.

⁶ *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106.

⁷ Opened for signature 17 July 1998, 37 ILM 999 (entered into force 1 July 2002).

⁸ *International Criminal Court (Consequential Amendments) Act 2002* (Cth) sch 1.

individual right of petition⁹ and the *Optional Protocol to the Convention against Torture*.¹⁰

If effective legal protection of rights were provided for in Australia, this would affirm our commitment to our international obligations and send a message of support for the UN human rights system. Australia cannot, alone, create a human rights world free of poverty and oppression, a world without borders. Nevertheless, by committing itself fully to effective implementation of international human rights obligations, Australia would be in a better position to exert influence in the international sphere and would strengthen the development of an international rule of law.

⁹ GA Res A/54/4, UN GAOR, 54th sess, Annex, Supp No 49, UN Doc A/54/49 (2000) art 7(4).

¹⁰ *Draft Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 58th sess, Annex, UN Doc E/CN.4/RES/2002/33 (2002).