

AUSTRALIA'S ROLE IN INTERNATIONAL HUMAN RIGHTS TREATIES AND THE REFUGEE ISSUE

INTRODUCTION

1. Declaration and Treaties

- December 10 1948: Australia was one of the authors of the Universal Declaration of Human Rights (with Australia's foreign minister Dr HV Evatt as President of the United Nations General Assembly for that year; the only time Australia has been president)
- the Declaration was the first stage of an International Bill of Rights
- declarations are not binding (even on the states that vote for them in the UN General Assembly)
- declarations have to be converted into treaties, which each state is able to ratify or reject as it sees fit

2. The Functions of Treaties

- i. A treaty reinforces existing restraints/ obligations by adding legal reasons to the inhibitions/ obligations derived from moral motives eg the right to free speech becomes more than a moral obligation on a government
- ii. A treaty (if well drafted) clarifies the state of the international law on an issue
- iii. A treaty that gains widespread acceptance sets a standard of internationally acceptable behaviour which other states (even though they may not parties to the treaty) must at least take into account eg racism is now unacceptable and even if a state carries it out it won't boast about doing so
- iv. A treaty may bring into existence a new international body to help monitor the treaty's implementation
- v. A treaty helps maintain the momentum in a particular issue and so paves the way for later treaties eg the expanding range of UN treaties (see #6 below)
- vi. A treaty is part of an international humanitarian "convergence" on the evolution towards common global human values eg opposition to racism and sexism

3. The Rudd Labor Government and Human Rights

- Rudd Government inherited a long tradition of Labor concern about protecting human rights (albeit with a mixed record of success) eg various failed attempts to implement some form of Bill of Rights (notably in 1973 and 1983)
- government commissioned Fr Frank Brennan and colleagues to conduct a national consultation on human rights, with the widespread NGO expectation that it would pave the way for a Charter of Rights at the national level
- but the project failed and the Charter of Rights issue is now suspended for some years as far as both parties nationally concerned (though doubtless some NGOs will continue their campaigns)

4. Reasons for Failure

- lack of determined government support for the project
- government feared that the issue could become a Liberal "wedge" issue, that is, an issue that a political party campaigns on in the hope of dividing the other party and undermines popular support for the party
- some legal figures opposed the Charter claiming it was unnecessary

- some Labor figures opposed the Charter eg allegedly handing too much power over to the courts¹
- there was little popular groundswell for the Charter eg little discussion of it on talkback radio in "mainstream Australia"
- government feared that it could lose support from the broad range of the population by being seen to be diverted onto this issue when there were so many other major issues to worry about, eg the economy, environment and healthcare

AUSTRALIA'S HUMAN RIGHTS FRAMEWORK

<http://www.ag.gov.au/humanrightsframework>

5. Maintaining Labor Government Commitment

- with the rejection of any Charter proposal, Rudd Government had to be seen to be doing something on human rights
- April 21 2010: Attorney-General Robert McClelland launched Australia's Human Rights Framework "which outlines key measures to further protect and promote human rights in Australia"
- government will spend \$12million in a set of human rights education initiatives
- new Parliamentary Joint Committee on Human Rights to provide greater scrutiny of legislation for compliance with Australia's international human " rights obligations
- government will require each new Bill introduced into Parliament to be accompanied by a statement of compatibility with Australia's international human rights obligations
- government will combine federal anti-discrimination laws into a single Act to remove unnecessary regulatory overlap and make the system more user-friendly²
- government will create an annual NGO Human Rights Forum to enable comprehensive engagement on NGO human rights matters

6. Core Human Rights Treaties

- the Attorney-General has identified in the Framework the following as the "seven core" UN treaties to which Australia is a party:
 - International Covenant on Civil and Political Rights
 - International Covenant on Economic, Social and Cultural Rights
 - Convention on the Elimination of All Forms of Racial Discrimination
 - Convention on the Elimination of All Forms of Discrimination Against Women

Note that Amnesty International in its list of "Foundations of International Law" also includes:

1990 International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families

2006 International Convention for the Protection of all Prisoners from Enforced Disappearance

- Australia is not a party to either treaty

¹ Interestingly the State of Victoria has its own legislation (Charter of Rights and Responsibilities) and in March-April 2010 the procedure was used for the first time (Vera Momcilovic case) and this has occurred without drama

² Also on April 21 2010, the Attorney-General announced the eventual combination of the following acts into one: Racial Discrimination Act 1975, Sex Discrimination Act 1984, Disability Discrimination Act 1992, Age Discrimination Act 2004

7. Role of Optional Protocols

- ratification of a treaty is in itself a decision for each state
- some matters are too controversial at the time to be included in a treaty eg right of a petition by an individual to a UN human rights body
- alternatively some matters come along later eg growing opposition to capital punishment
- in both cases, they can be catered for in "optional protocols", whereby a state can ratify them as it sees fit

8. Recent Australian Action on Optional Protocols

- May 22 2009: Attorney-General announced that Australia would ratify the Optional Protocol to the Convention Against Torture
- Australia became a party to the treaty in 1989 (under the Hawke Labor Government)
- Optional Protocol represents a further prevention and enforcement mechanism by obliging parties to allow periodic international inspections of places of detention and to establish formal mechanisms to enable regular examination of the treatment of persons in places of detention
- March 11 2010: Attorney-General welcomed the passage of legislation through Parliament which prohibits the use of torture and ensures that the death penalty cannot be reintroduced anywhere in Australia in the future
- Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Bill among other things amends the Commonwealth's Death Penalty Abolition Act 1973 to extend the application of the current Commonwealth prohibition on the death penalty to State laws
- legislation safeguards Australia's compliance with the Second Optional Protocol to the International Covenant on Civil and Political Rights, which requires all necessary measures be taken to ensure that no one is subject to the death penalty

THE REFUGEE ISSUE

9. Not a "Human Rights" Issue

- Australian Governments do not evidently regard the UN Refugee Convention as a "human rights" issue; the treaty is not listed in the government's list
- Australian Governments can therefore exclude asylum seekers from the usual Rule of Law and procedural fairness matters accorded Australians

10. The Refugee Situation

- total global refugee population: about 22 million; Australia has resettled about 700,000 since 1945
- distinction: "migration" (about 170,000 pa) and "refugees" (about 13,500 pa)
- 1951 Refugee Convention was a reaction to the pre-1939 European governments' refusal to criticise Hitler's treatment of the German Jews and refusal to allow Jews to flee into their countries; 1967 Protocol extended the coverage of the original treaty
- right to leave a country is listed in the 1948 Universal Declaration of Human Rights (Article 14)

11. Explaining the Anomaly

i. change in values

- Australia was the 6th state to ratify the treaty; it is also a party to the 1967 Protocol

- but now there is a movement away from the classical humanitarian thinking eg "right thing to do": to help people in need; "to whom much is given, much is expected"; "you never know when you could end up as a refugee" (Golden Rule! Kantian Ethics)

ii. no one expected such a large movement of peoples

- while the world overall now has a reduced number of conflicts, there are many internal conflicts and so people are fleeing from the violence

iii. Australia's has an unrealistic fear of invasion

- the reason that Australia can be so precise about the number of asylum seekers is that the number is so small; Australia is very hard to enter (a person can't walk or drive here); in Africa they round numbers up to the nearest 1,000!

- Australia has a deep-seated fear of cheap Asian labour etc

iv. role of the media:

- "moral panic": getting people scared by exaggerating the size of the risk (eg periodic "law and order" scare campaigns)

- in our increasingly individualistic and fragmented society, one thing binds the community together: fear

- media can whip up fear of strangers arriving in one's own country

- alternatively media can also whip up support for allowing such people to enter eg in 1999 Australia brought in temporarily 4,000 Albanian Kosovars allegedly being persecuted by Serbs (a brilliant operation in a temporary settlement involving government departments and NGOs)

v. new issues

- refugee treaty has a narrow definition of a "refugee" (reflecting its wartime heritage)

- now: "environmental" refugees eg due to climate change

- "also: economic refugees" eg people seeking a better standard of living

12. Some Suggestions

- good way to stop refugees is to increase foreign aid: give people more of an incentive to stay at home

- real focus of "illegal migrants" should be on visa over-stayers especially the British!