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Senate Foreign Affairs, Defence and Trade References Committee
Online submission

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Dear Committee

Re: Inquiry into the Indian Ocean Region and Australia's Foreign, Trade and Defence Policy

Thank you for the opportunity to make a short submission to this inquiry. I am an international lawyer specialising in security and human rights, and author of the recent article: "Throwing Stones at Streetlights or Cuckolding Dictators? Australian Foreign Policy and Human Rights in the Developing World" (2011) 100 *The Round Table: The Commonwealth Journal of International Affairs* 409-425 (annexed).

As Dr H.V. Evatt recognised in the Australian Parliament and in negotiating the United Nations Charter in the 1940s, security anywhere can only be maintained if conditions of justice, human rights, and development are established. Some of the most critical elements of Australia's security in the Indian Ocean region accordingly include:

- (a) Increasing Australia's foreign aid and technical assistance for human development and human security in the countries of the region;
- (b) Actively supporting calls for international justice, including the prosecution of suspected war criminals or those who have committed crimes against humanity in countries such as Sri Lanka, Myanmar and Indonesia;
- (c) Developing a more coherent, integrated human rights foreign policy, to replace Australia's currently ad hoc and inconsistent approach to human rights across different countries and different thematic issues in the region.

Please be in touch if I can be of any further assistance.

Yours sincerely

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Throwing Stones at Streetlights or Cuckolding Dictators? Australian Foreign Policy and Human Rights in the Developing World

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ABSTRACT *The history of Australian human rights policy in the developing world is chequered. Australia's most consistent contribution has been in socio-economic rights through its aid programme, and in its support for decolonisation. During the Cold War, a premium was placed on civil rights, in ideological opposition to communism. After the activism of the Evatt era from 1945 to 1949, and a hiatus until 1972, renewed engagement with multilateral institutions, in part as a way of influencing human rights in developing countries, came with the Whitlam, Fraser, Hawke/Keating and Rudd governments, while there was some retreat under the Howard government. All governments since the early 1970s have had considerable human rights successes (including through bilateral diplomacy) and some often dramatic failures; most have sacrificed human rights at some point for other strategic objectives. Governments have also struggled with their choice of means in confronting violations. There remains room for Australia to articulate a more effective human rights diplomacy.*

KEY WORDS: Australia, human rights, foreign policy, Anzac Pact, Canberra Pact, diplomacy, decolonisation, self-determination, Refugee Convention, regional security operations, developing countries

Introduction

Unlike that of its close ally, the United States, Australian foreign policy since 1945 has never been animated by an equivalent sense of civilising moral mission and ideological purpose in the area of human rights. As a much smaller power, Australia has been conscious of its more limited capacity to project its values on to others. Situated within the Asia-Pacific, Australia has also been aware of its culturally precarious position in its region, and of the need to preserve good political and economic relations with its trading neighbours. The absence of a constitutional bill of rights in Australia and the lack of a regional human rights system (unlike in the

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Americas, Europe and Africa) have also ensured that human rights have been a lower priority in Australian political life and foreign policy than in other regions.

Even so, human rights have played a prominent role in Australian foreign policy at various times and Australian diplomacy has often swung between idealism and realism, and combinations of both. From 1945 to 1949 Australia played an active role in building global support for a new, universal normative system of human rights based on principles of decolonisation, equality and non-discrimination. The onset of the Cold War resulted in human rights again taking a back seat to strategic and security imperatives such as the US alliance and efforts against communism, although Australian development aid still advanced socio-economic rights in this period. From 1972, human rights assumed an increasing, albeit varying, importance in the foreign policy of successive Australian governments, with all governments recording notable achievements and certain failures.

In this context, this article explores the place (and, all too often, the absence) of human rights in Australian foreign policy from 1945 to 2010, largely from the disciplinary perspective of international law. It focuses on Australia's interaction with the 'Global South', 'Third World', or 'developing world'. Each of those generalising descriptions has its own baggage and limitations. For the purpose of this discussion, the focus is on Australia's relations with the non-western, less-developed countries, acknowledging that there is a spectrum of experiences in between.

The Post-war Global Settlement 1945–49

The aftermath of the Second World War marked a watershed in Australia's disposition towards human rights in its foreign policy. A convergence of factors precipitated the transformation: the shocking violence of the war and Australia's direct experience of it; the failure of the Great Power system to contain the global conflagration; the power shift from Britain to the United States, and the corresponding shift in Australia's security alliance; the obvious end of empires and the collapse of colonial systems; the maturing of Australia's independence from Britain; the rise of a cosmopolitan, internationalist sentiment; and the role of individual Australians such as Dr H. V. Evatt in the creation of a new, multilateral world order through the United Nations.

In 1941, Dr Evatt's maiden speech in parliament as Minister for External Affairs invoked the Atlantic Charter (between Britain and the United States) and supported its premise that 'international peace can be maintained only through international justice', which required the global protection of Roosevelt's 'four great freedoms' (quoted in Watt, 1967, p. 72). The failure of the allied powers at the Cairo Conference of 1943 to consult Australia and New Zealand about the post-war order triggered new diplomatic activism in those Dominions (Watt, 1967, p. 73). By the so-called 'Anzac Pact' or 'Canberra Pact' of January 1944, Australia and New Zealand declared their support for a post-war settlement based on ideas about justice and human rights: fostering full employment and social security in the South Pacific (Article 35); non-alteration of the sovereignty or control of Pacific islands without their assent (Article 27); and the application of a trusteeship principle to all colonial territories in the Pacific, to promote their welfare (Article 28) (Watt, 1967, pp. 74–75). The creation of the South Pacific Commission in 1947 aimed to improve the

socio-economic situation of the islanders and prepare them for self-government (Lee, 2006, p. 74).

Human rights concerns assumed considerable importance in the drafting of the United Nations Charter and in the new world order it constructed. Australia was active and occasionally influential in its formulation (Watt, 1967, pp. 78–93), despite not being involved in the Dumbarton Oaks conference of 1944, which sketched its essential features. The Australian delegation was committed to ‘international action to secure social justice and economic advancement’ (quoted in Watt, 1967, p. 83), including by advancing labour standards, full employment and social security (Lee, 2006, p. 77). Structurally, Australia sought to elevate the Economic and Social Council into a principal organ of the UN, to constrain the veto powers in the Security Council, and to widen the mandate of the General Assembly. The latter effort came to assume great importance as many newly independent, decolonised states emerged and shifted the balance of power in the Assembly away from the developed states and towards the developing states.

Australia also sought to strengthen international accountability over colonial territories by strengthening the trusteeship system, including in the areas of economic, social and educational conditions (Lee, 2006, p. 77). At the same time, Evatt’s internationalism was not selfless. Australia saw the trusteeship system as a means of advancing Australia’s regional strategic interests (Lee, 2006, p. 77), including by allowing it to control areas such as Portuguese Timor, Papua and (northeastern) New Guinea, Netherlands New Guinea (West Papua), British Solomon Islands, New Hebrides (Vanuatu) and New Caledonia. Such control was also seen as capable of limiting Asian immigration to the region (Lee, 2006, p. 77), an objective hard to reconcile with the human rights aspirations of the Charter, in an era where the Curtin and Chifley Labor governments favoured Australia’s long-standing racist immigration policy.

As the new United Nations system took root, Australia remained actively engaged in it as Evatt sought to avoid entrenching Australia in the great power rivalry of the emerging Cold War. Evatt was active at the founding conference of the United Nations in San Francisco between April and June 1945, and later as President of the General Assembly in 1948–49 (including during the creation of Israel in Palestine and the adoption of the *Universal Declaration of Human Rights*). From the early days of the UN Commission on Human Rights, created in 1947, Australia even argued for the establishment of an International Court of Human Rights, but later under Menzies Australia drifted towards preferring less adversarial and less binding methods. Australia’s sustained support over 60 years for multilateral approaches to protecting human rights through coordinated United Nations action none the less made a significant contribution to drawing developing countries into a framework of universal norms and thereby in socialising them into a culture of rights.

The Decolonisation Context

Closer to Australia, Evatt assisted in the decolonisation of the Netherlands East Indies between 1947 and 1949 by offering Australia’s services to mediate between the Dutch and the Indonesian nationalists. Australia even referred the matter to the UN Security Council, seemingly siding with Asian nationalists against a white European

colonial power (Lee, 2006, p. 79). Australia's involvement in that settlement also began Australia's long tradition of participation in UN peacekeeping missions, with 45 Australian military personnel in two UN missions between 1947 and 1951. Since 1947, over 30,000 Australians have served in more than 50 UN peacekeeping operations or other emergency relief operations abroad. Australia also supported the British decolonisation of India, Pakistan and Ceylon (Sri Lanka) (Greenwood, 1957, p. 695).

The path to independence of Australian-controlled territories was, however, slower: Nauru in 1968 and Papua New Guinea in 1975. The separation of Nauru from Australia involved particularly serious human rights concerns. The strip mining of phosphate by Australia and Britain had caused substantial ecological damage and thus impaired the future socio-economic basis of human habitation on Nauru. After Nauru initiated legal proceedings against Australia before the International Court of Justice (*Nauru v Australia*, 1992), in 1993 Australia made an out-of-court settlement to compensate Nauru, to fund rehabilitation of lands mined before independence. In the case of Papua New Guinea (PNG), Menzies' successor in 1968, John Gorton, was keen to divest Australia of responsibility, in part because of the costs of administration, the risk of separatist movements (as in Bougainville), and pressure from Labor in opposition to respect the self-determination principle (Lee, 2006, pp. 198–199). The Whitlam government successfully completed PNG's transition towards independence. Elsewhere, Australia supported Kanak self-determination in French New Caledonia (Harris, 1987, p. 24).

Controversy has dogged Australia's position on other situations of decolonisation, which have often been heavily influenced by Australian security or strategic imperatives. Under Evatt, Australia did not resist South Africa's efforts to incorporate South West Africa (now Namibia) (Elliott, 1997, p. 187). Under Menzies, Australia pragmatically accepted the incorporation of West Papua into Indonesia in 1963 and the 'Act of Free Choice' of 1969, despite occasional expressions of support for Papuan self-determination and ambivalence about Indonesian (that is, Asian) expansion towards Australia. That situation remains unresolved. While Menzies criticised China's expansion into Tibet (Watt, 1967, p. 247) (out of security rather than human rights concerns), successive Australian governments recognised Chinese sovereignty over Tibet, despite its acquisition by military force in 1959, contrary to Article 2(4) of the UN Charter.

Under Whitlam, despite espousing the importance of self-determination, Australia acquiesced in the Indonesian invasion of East Timor in 1975 (Viviani, 1997, p. 99). While Fraser argued for a UN process of self-determination there, in 1978–79 the Fraser government, followed by successive Labor governments (1983–96) and then the Howard government until 1999, made Australia the only country to recognise East Timor's absorption into Indonesia—an occupation that involved serious international crimes that killed hundreds of thousands of Timorese (CAVR, 2005). Maintaining bilateral relations with Indonesia and good relations with the Association of Southeast Asian Nations (ASEAN) were long seen by governments as Australia's strategic priorities. Economic concerns were also at work: Australia cooperated in the exploitation of Timorese natural resources in the Timor Sea, through oil and gas agreements with Indonesia, contrary to the international law of occupation.

The early Indonesian ‘confrontation’ aside, a theme of appeasing Indonesia runs deep in Australia’s relations with it, particularly in the area of human rights. The killing of up to half a million ‘Communists’ and other enemies by the Indonesian authorities in the 1960s attracted little criticism from Australia, nor were there moves by Australia to pressure Indonesia to prosecute such widespread crimes against humanity. Despite some efforts to prosecute Indonesian crimes in East Timor after 1999 under UN auspices, most perpetrators escaped any criminal justice process.

Elsewhere, Australia has expressed fairly muted criticism of the protracted Israeli occupation of Palestinian territories since 1967. There has long been bipartisan support for Australia’s often uncritical ‘friendship’ with Israel, symptomatic of an unprincipled malaise about the rights of populations at risk in politically sensitive contexts. Australia equally said little about Morocco’s illegal invasion and occupation of Western Sahara in 1975, and has actively sustained that occupation by being one of the world’s largest importers of phosphate (for agricultural fertiliser), which has been illegally exploited by Moroccan companies there.

The Cold War Period 1949–72

With the fall of the Labor government in 1949, foreign policy under the conservative Menzies government did not place as high a priority on either multilateralism or human rights diplomacy. Australia’s relative independence of the Great Powers under the post-war Labor government (Kent, 2001a, p. 259) was replaced by Cold War alliances. For Menzies and his first Minister for External Affairs, Percy Spender, the emphasis was on strengthening security cooperation with the United States and cementing cooperation within the British Commonwealth (Watt, 1967, p. 113). Menzies respected the UN but had a realist’s appreciation of its limitations and scepticism of the artificiality of the ‘equality’ of states in a highly unequal geopolitical world (Watt, 1967, p. 114).

It would not be accurate, however, to suggest that the Menzies government was unconcerned with human rights overseas. On the contrary, Spender recognised that security problems of instability and communism in Southeast Asia were based ‘in the poverty that exists in the region itself, no less than in the pressure from external forces’ (quoted in Watt, 1967, p. 115). Australia’s adoption of the Colombo Plan to provide economic and technical assistance in the region after 1950 (Watt, 1967, pp. 115–116) made important contributions towards improving socio-economic conditions in the region, and stimulated a bipartisan Australian commitment to providing foreign aid and development assistance over the next 60 years. The education of 20,000 Asian students in Australia between 1951 and 1980 also helped to erode the White Australia policy at home (Lee, 2006, p. 99). At the same time, however, Spender deplored what he saw as the tendency of the UN to pursue an ‘exaggerated interpretation of its powers’ in the area of human rights (quoted in Watt, 1967, p. 117).

The emphasis on combating communism defined a second area of human rights concern in the ‘Menzies era’ from 1950 to 1972. As elsewhere in the West, political asylum was extended to dissidents from Communist regimes, albeit often used instrumentally as a political tool to discredit communism. Here the emphasis was on classic, ‘Western’ civil and political rights—that is, freedom from State interference—rather than on the socio-economic rights that preoccupied the Communist systems. In 1954 Australia became only the third State to ratify the Refugee

Convention of 1951 (*Final Act and Convention Relating to the Status of Refugees*, 1954), although as it then stood it was limited to protecting refugees in Europe prior to 1950. Ironically, at home Menzies' attempt to outlaw the Communist Party in Australia was seen to put at risk the very political freedoms that communism was thought to jeopardise.

The emphasis on combating communism also manifested itself in Australia's involvement in various anti-Communist military campaigns, partly grounded in an ideological belief that fighting the spread of communism was necessary to safeguard human freedom, and partly in a commitment to solidifying the US alliance. Thus, from 1950 to 1953, with UN Security Council authorisation, Australia joined the United States and others in defending South Korea against North Korean and Chinese aggression—Australia's second war against China if the Boxer Rebellion of 1900 is included. Alongside the British, Australian forces were deployed against Communist insurgents in the Malayan Emergency from 1950 to 1963, and fought Indonesian irregulars in the 'Indonesian Confrontation' in Malaysia from 1963 to 1966. Australian participation in the Vietnam War from 1962 to 1975 is most well known, being a war purportedly fought in defence of political freedom (and the US alliance) but inflicting severe harm on the human rights of civilians in Vietnam, Cambodia and Laos. Australia principally opposed communism for security and ideological reasons, but less commonly on human rights grounds—a better reason for opposing it, given the excesses of such regimes in the Soviet Union and China.

The Whitlam and Fraser Era 1972–83

The election of the Whitlam Labor government in 1972 brought changes to Australia's foreign policy in relation to human rights, but it also involved some major policy failures. Under Whitlam, Australia signed many of the key modern international human rights treaties and terminated the 'White Australia' immigration policy in 1973. Further, in 1973 Australia adopted the Refugee Protocol of 1967 (*Protocol Relating to the Status of Refugees 1967*, 1973), which 'universalised' refugee protection, hitherto limited to refugees in Europe before 1950, although in practice Whitlam was not sympathetic to Indochinese refugees after the fall of South Vietnam in April 1975—nor as sympathetic as his successor after 1975, Malcolm Fraser.

Whitlam's turn against racial discrimination also manifested in opposition to the white minority apartheid regime in South Africa. Under Menzies, even after the Sharpeville massacre of 1960, Australia supported South Africa's membership of the Commonwealth (Lee, 2006, p. 126), not least because of Australia's own precarious position owing to its racially discriminatory immigration policy. Menzies had likewise supported membership for the minority regime in Southern Rhodesia. By contrast, Whitlam restricted sporting contact with apartheid South Africa, and the boycott was intensified by Fraser after 1975. Through the Commonwealth, Fraser actively pushed for a fair settlement of the conflict in Southern Rhodesia, leading to an elected black majority government under Robert Mugabe (Lee, 2006, pp. 196–197)—who would come to cause human rights problems of his own as an ageing dictator from the 1990s. After 1983, the Hawke Labor government exerted further pressure to end apartheid in South Africa by restricting the regime's financing.

Despite formal legal commitments to human rights treaties under Whitlam, Australia's human rights policy 'lacked an overall coherence' and was not particularly active in relation to other governments' performance (Russell, 1992, p. 24). Whitlam's recognition of Communist China was not accompanied by criticism of it, at a time when China was still gripped by the tail end of the Cultural Revolution and its grave rights violations. As noted earlier, Whitlam actively opposed an independent East Timor, regarding it as neither viable nor in the interests of security, and thus encouraged Indonesian adventurism there.

While Australia's involvement in Vietnam formally ended under Whitlam in January 1973, Australia's withdrawal of troops had begun under the previous government in 1970. Whitlam recognised the Khmer Rouge regime in Cambodia in April 1975, albeit without establishing formal diplomatic relations (Russell, 1992, p. 26) and before the extermination practices of that regime had begun in earnest. Although Fraser did not actively support the Khmer Rouge, his government did not immediately withdraw Australia's recognition of it, even after the scale of its atrocities had become clear, in part because Foreign Minister Andrew Peacock urged solidarity with ASEAN (Russell, 1992, p. 26)—a body not well known for sympathy towards human rights. Fraser's criticism only became more strident from 1981 onwards. Under the following Labor government, Foreign Minister Gareth Evans actively sponsored a UN peace process from 1989 onwards, which culminated in a peace settlement in 1991 and a transition to democracy. An eminent Australian jurist, Michael Kirby, also played a role as UN Special Representative for Human Rights in Cambodia.

The Hawke/Keating Labor Era 1983–96

Under successive Labor governments from 1983 to 1996, a new activism emerged in Australia's human rights diplomacy, particularly under the stewardship of the successive Ministers for Foreign Affairs, Bill Hayden and Gareth Evans. In articulating the first well-developed theory of human rights in Australian foreign policy since Evatt, Evans projected human rights as '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' (Evans, 1993, p. 145). Good international citizenship meant adhering to international treaties, supporting the UN human rights system, and progressively developing human rights law. Australia also participated in the establishment of the Commonwealth Secretariat's Human Rights Unit in 1985 (Commonwealth Secretariat, 1986, p. 1082), although its powers were limited to the promotion of rights rather than their investigation or enforcement, and Hawke denied that the Commonwealth would examine human rights situations in individual countries (Duxbury, 1997, pp. 358, 362).

The evolution of dynamic *bilateral* human rights diplomacy during the Evans era was a second distinctive characteristic of this period. A large number of 'representations' about human rights issues were made by Australia directly to foreign governments (Evans, 1993, pp. 147–149), often after referrals from the Amnesty International Parliamentary Group.

A third, related feature of the Evans regime was the emergence of structured bilateral human rights 'dialogues' with China. Immediately after the Tiananmen

Square incident in 1989, the Hawke government condemned the massacre, allowed 20,000 Chinese students to remain in Australia, and temporarily suspended new foreign aid until 1991 (Firth, 1999, p. 222). Yet, bilateral trade was barely affected, nor were existing aid commitments. Australia's primary response was to secure a commitment from China to permit Australian human rights delegations to visit in 1991 and 1992, resulting in reports that criticised China's record, although later dialogues in the 1990s were more passive (Kent, 2001b, p. 611).

At first glance, China's acceptance of external scrutiny by other states was a remarkable development, given China's hitherto protective view of sovereignty and its insistence on non-interference in its internal affairs. At the same time, critics observe that the dialogues were based on negotiated rather than universally agreed standards and lacked accountability; they did not appear to induce real behavioural and normative change; and the retreat from confrontation into quiet, bilateral cooperation (or 'constructive engagement') undermined prospects for strong multi-lateral measures (and thus for re-socialisation) through the UN (Van Ness, 1992; Kent, 2001b). Engagement only with government officials, rather than Chinese civil society, was a further limitation (Fleay, 2008). The dialogues were also instrumentally useful to China, not only in rebuilding its reputation and legitimising its human rights performance (Kent, 2001b, p. 619), but also in its economic affairs. Australia's role, for instance, assisted China in maintaining most-favoured-nation status in its trade relations with the United States. As Australia's trade relations with China assumed greater importance, Australia became less active in criticising China at the UN.

Australia was often more outspoken about human rights abuses by the military regime in Myanmar, in large part because Myanmar was of considerably less economic and strategic importance than China to Australia. While Australia was highly critical of the military regime after the 1990 elections (won by democracy leader Aung San Suu Kyi), Australia's efforts to secure international support for the imposition of sanctions on the regime were thwarted by states such as China, India and the ASEAN group (Firth, 1999, p. 225).

As a result, Australia's focus shifted to bilateral measures such as prohibiting defence exports and suspending aspects of development assistance, as well as the usual practice of making direct representations (Firth, 1999). Over time, Australia also toyed with quieter forms of 'constructive engagement' by sending human rights delegations to Myanmar, although these faced the criticism that they were legitimising the regime. Gareth Evans explained the tactical issue as follows:

We must make a judgment, for example, about how public our efforts should be. There are occasions, for example in relation to Burma, when measured public criticism of oppressive regimes has had its place. But more often, repeated quiet entreaties—grinding away at an administration—are more effective. It is clear that grandstanding can be very counter-productive. At best, it draws attention to an issue but with virtually no prospect of achieving improvements. At worst, it can lead to a hardening of attitudes, and even execution of the victims ... (Evans, 1993, pp. 149–150)

For that reason, Evans thought that '[i]n most cases ... trade embargoes and other punitive measures [such as linking foreign aid to human rights performance] are not

an effective way to bring about human rights reforms' (Evans, 1993, p. 150). Isolating countries can indeed be counter-productive: it may sometimes result in Australia losing any capacity to influence the foreign government and, as the case of Myanmar suggests, provide space for states that are not friends of human rights in their foreign policy—such as China—to step into the void and extend their influence. There has, however, been some Australian experience to the contrary, where isolation does yield results: not only in South Africa, but also in Fiji. After a military coup in 1987, Fiji abandoned a law for detention without trial after Australia threatened to withhold aid (Firth, 1999, p. 220). None the less, the subsequent Howard government took a similar view to Evans (Attorney-General's Department, 2005, p. 65).

Evans's thinking was perhaps influenced by Australia's failure to be re-elected to the UN Commission on Human Rights in 1987, partly as a result of Australia's strong support for resolutions critical of certain states (Harris, 1987, p. 18). In addition, Australia's strident criticism of Malaysia's application of the death penalty to Australian drug traffickers in 1986 had triggered a backlash against perceived Australian racism and imperialism from Malaysian Prime Minister Mahathir (Russell, 1992, p. 32). Increasing appreciation of 'Asian' sensitivities, not least because of the growing importance of economic and strategic relations with ASEAN, drove Australia's acknowledgement of the 'Asian values' perspective. Thus, Evans wrote that while cultural relativism cannot justify human rights violations,

One has to recognise, nonetheless, that many of the intellectual assumptions underlying current international civil and political human rights standards are of European cultural origin, and that much of the friction and misunderstanding which sometimes characterise international debates on human rights reflect differences between liberal democracies, on the one hand, and countries where individual rights have no strong foundation in the national culture, on the other. (Evans, 1993, p. 148)

Evans also acknowledged pragmatic constraints on human rights diplomacy:

None of this is to suggest that Australia's human rights policy involves the uncomplicated application of high principle irrespective of the consequences. There are obviously times when we have to make choices about how to best handle a human rights issue in order to be effective and protect our national interests at the same time. (Evans, 1993, p. 149)

The theory sounds reasonable, the practice perhaps less so: Australia could criticise small countries such as Myanmar, Fiji or Cambodia with relative ease, but tended to balk at confrontation with bigger players such as China, Indonesia or the key ASEAN countries. The selectivity of approach had a habit of undermining public confidence in the integrity of Australia's diplomacy. There was also, however, a belief in government that maintaining economic relations with countries with poor human rights records could itself bring change by stimulating domestic political liberalisation. That theory was not necessarily corroborated by practice in countries such as China, Singapore and other East Asian 'tiger' economies.

The Howard Government 1996–2007

With the election of the Howard government in 1996, there was continuity and change in Australian policy (Kent, 2001a, pp. 264–265). In a speech of 1996, Foreign Minister Alexander Downer declared that ‘the treatment of individuals is a matter of concern of itself to Australia’ and that promoting human rights also ‘underpins the country’s broader security and economic interests’ (Downer, 1996). Downer placed particular importance on linking the two categories of rights – civil and political, and economic, social and cultural rights – through the overarching ‘right to development’ (Downer, 1996). As such, foreign aid was conceptually seen as a particularly important means of delivering human rights outcomes abroad, even if, in reality, Australian aid fell to less than half of the UN target of 0.7% of Australia’s GDP (Kent, 2005, p. 245)—even taking into account the much publicised, generous one-off aid after the Indian Ocean tsunami of 2005.

Australia still did not, however, pursue a ‘human rights-based approach’ to development aid at the level of programme implementation, despite recommendations to that effect (Joint Standing Committee, 2010, p. 134), although there was an effort to ‘mainstream’ gender in the aid programme (National Action Plan, 2005, p. 64). Australia’s foreign aid agency, AusAID, has also maintained a human rights grants programme, and contributed large amounts of funding to rule-of-law and law-and-justice programmes in countries such as PNG, although with mixed success (Armytage, 2010, chapter 9).

The approaches of Downer and his predecessor Gareth Evans were similar in significant respects. Like Evans, Downer believed ‘Australia must be realistic in its assessment of what can and cannot be done . . . and practical about the best means of seeking to realise its human rights goals’ (Downer, 1996). Downer also believed bilateral diplomacy was important, although bilateralism came increasingly to overshadow multilateral efforts over time. Like Evans, Downer also pledged ‘not to lecture or hector’ foreign governments over human rights (Downer, 1996), but instead to work through quiet, constructive diplomacy.

Downer thus continued bilateral dialogues with China, Vietnam and Iran, although a parliamentary committee observed generally that dialogues can sometimes lack accountability (Joint Standing Committee, 2010, p. 129). Myanmar was a particular if controversial focus, with human rights training of government officials conducted in 2000–03, with the commendable objective of socialising that pariah state through engagement with human rights norms (Kinley and Wilson, 2007). That programme ended, however, as a result of the deteriorating political situation in Myanmar, making it difficult—as is always the case with ephemeral training programmes—to assess its impact on changing behaviour.

Despite a promising start, the Howard government soon demonstrated considerable resistance to human rights, which is partly explained by an insistence on outdated notions of exclusive national sovereignty (Kinley and Martin, 2002). Most damagingly, Australia showed active hostility in 2000 towards the UN treaty monitoring bodies (Haller, 2001) after being stung by UN criticism. On iconic human rights issues abroad, such as the Israeli security barrier in the Palestinian West Bank, Australia actively opposed the jurisdiction of the International Court of Justice and opposed related initiatives in the UN General Assembly.

Three particularly acute human rights issues defined the Howard era. First, Australia joined the United States and the United Kingdom in invading Iraq in March 2003, in violation of the prohibition on the use of force under Article 2(4) of the UN Charter and in the absence of any legal justification of self-defence or Security Council authorisation (Saul, 2003). In doing so, Prime Minister Howard and other senior government leaders arguably committed the customary international law crime of aggression. The war and associated disorder left perhaps 650,000 Iraqis dead by 2006 (Burnham *et al.*, 2006). The Howard government's enthusiasm in supporting US President Bush's administration in the global 'war on terror', including military trials of foreigners at Guantanamo Bay, also raised serious human rights concerns.

Second, the Howard government maintained the system of mandatory immigration detention of asylum seekers that had been instituted by the Labor government in 1993. Protracted, remote and punitive detention of vulnerable and often traumatised refugees—many from conflict areas such as Iraq, Afghanistan or Sri Lanka—inflicted considerable mental harm, as did the psychological uncertainty of 'temporary protection' visas issued to irregular 'boat' people. Coalition and Labor governments alike repeatedly ignored 'views' by the UN Human Rights Committee that mandatory immigration detention amounted to arbitrary, unlawful detention. It was only after an internal revolt late in the Howard government that aspects of detention policy were softened. The militarisation and toughening of border protection—including the use of special forces to storm the MV Tampa in 2001, the 'turning back' of boats, the Pacific Solution involving processing on Nauru, and the 'excision' of territory from the 'migration zone'—were heavily criticised on human rights grounds. Australia continued, however, to be one of very few countries to offer a large number of offshore resettlement places for refugees.

Yet, the prevailing view that the Howard government was no friend of human rights is not accurate. Under Howard, Australia supported the Ottawa anti-personnel land mines treaty and invested resources in mine clearance operations globally, as in Lebanon (Kent, 2001a, p. 266). Australia ratified the Rome Statute of the International Criminal Court (ICC) and later supported the UN Security Council's referral of violence in Sudan to the ICC, although there was not a single successful war crimes prosecution in Australia itself between 1950 and 2010, and not for lack of suspects. At a regional level, Australia supported the establishment of the Asia-Pacific Forum of National Human Rights Institutions and established a Centre for Democratic Institutions in 1998 to support good governance in developing countries.

Australia was also active in seeking to protect human rights in particular developing countries. Prime Minister Howard personally led efforts to suspend Zimbabwe from the Commonwealth in 2002, following unfair and violent elections in Zimbabwe and breaches of the 1991 Harare Principles. Australia continued to support UN sanctions against Iraq, primarily for security reasons, and provided wheat to Iraq under the 'Oil for Food' exception, although an Australian company, AWB, later became embroiled in a major corruption scandal over its illegal dealings with Saddam Hussein's regime (Report of the Cole Inquiry, 2006). While a domestic inquiry into those dealings criticised the Department of Foreign Affairs and Trade's procedures, little responsibility was attributed to Australia for its arguable failure under international law to ensure the integrity of the sanctions regime.

Regional security operations by Australia have also brought human rights benefits. Australia led the Peace Monitoring Group in Bougainville from 1998 to 2003, in which around 4,100 Australian military and civilian personnel participated, and to which Australia provided over \$250m to support the peace process and post-conflict reconstruction (Department of Foreign Affairs and Trade, 2010). Since 2003, Australia has taken a leading role in the Regional Assistance Mission to Solomon Islands, which aimed to assist the government there to restore law and order, strengthen government institutions, reduce corruption and reinvigorate the economy. Australian military and reconstruction assistance has also brought some stability to Afghanistan through the multinational military operations there after the terrorist attacks of 11 September 2001. Australian assistance in cases of ‘state failure’ has tended, however, to be justified by security objectives rather than by the human rights benefits that they may also bring (Kent, 2005, p. 246), although Australia also took positions of principle in relation to ethnic cleansing in Kosovo in 1999 and by recognising Kosovo’s independence in 2010.

In 1999, Australia’s intervention in East Timor, still occupied by Indonesia, involved mixed motives of security and humanitarian ends. Australia mobilised international support for a UN peacekeeping operation, with the consent of Indonesia. Its deployment promptly restored order and enabled a UN administration to effect the transition of East Timor to independence and self-rule. Australia’s role in Timor was not, however, unblemished. Australia later refused to delimit its maritime boundary with East Timor, which would most probably have resulted in Australia losing claims over resources in the Timor Sea. Instead, through *ad hoc* political negotiation, Australia succeeded in achieving a pragmatic suspension of the maritime claims, coupled with agreements with Timor to exploit the resources jointly.

The Rudd/Gillard Era 2007–10

The election of a Rudd Labor government in 2007 involved a conscious return to multilateralism in human rights and to a commitment to ‘global governance’ generally (as on climate change, nuclear non-proliferation and whaling). With the new activism came the risk of a muddled, over-full foreign policy agenda, without any clear sense of priorities. In the human rights area, however, it paid immediate dividends, particularly through support for various new multilateral human rights instruments. In 2008, the government also established an Asia-Pacific Civil–Military Centre of Excellence, to promote civil–military collaboration in conflict prevention and sustainable peace in the region, as well as a ‘Responsibility to Protect Fund’ to strengthen that concept in preventing mass atrocities. The government also announced modest increases in Australia’s foreign aid programme—which still remains well below the UN target—and the expansion of aid programmes beyond the Asia-Pacific region and into Africa (albeit related to Australia’s Security Council bid).

At a country level, by 2010 Australia maintained targeted autonomous sanctions against Myanmar, North Korea, Iran, Zimbabwe, Yugoslavia and Fiji. Australia also increased its funding to the Cambodian tribunal for the prosecution of Khmer Rouge leaders, increased foreign aid to Palestine, and was active in criticising military rule in Fiji. In a speech at Beijing University in April 2008, the Prime Minister, fluent in Chinese, pointedly raised human rights problems in China and

Tibet and called for China to engage in 'responsible global citizenship' (*The Australian*, 2008). Scrutiny of China continued with the new Prime Minister, Julia Gillard, expressing support for the award of the Nobel Peace Prize to dissident Chinese writer Liu Xiaobo in 2010 (AAP, 2010).

The Rudd government's human rights performance was, however, less impressive in other respects. The government abandoned an election pledge to initiate international legal proceedings against Iran for incitement to genocide against Israel. At the same time, Australia bowed to interest group pressure to boycott a world anti-racism conference, 'Durban II', on the basis that it might be a forum for anti-Semitism. In doing so, Australia lost an opportunity to engage in multilateral dialogue against racism everywhere. In 2009, Australia protested against the UN's Goldstone Report into international crimes in the Gaza conflict in 2008–09 (UN Human Rights Council, 2009), without providing reasons or engaging with its substance. When Israel assassinated a suspected Hamas financier in Dubai, Australia belatedly criticised Israel for misusing Australian passports—but said nothing about the illegality of the assassination itself. Australia did, however, criticise Israel for its violent raid on a flotilla of humanitarian ships seeking to reach Gaza in early 2010.

The Rudd government quietly improved the situation of asylum seekers early in its term of office, including abolishing temporary protection visas and the Pacific Solution. Yet, once a new Opposition leader, Tony Abbott, re-politicised border protection, the government increasingly 'raced to the bottom' in toughening refugee policy. The processing of Afghan and Sri Lankan asylum seekers was suspended, despite being discriminatory and leading to arbitrary detention. Remote new detention centres were opened. After Rudd was replaced as Prime Minister by Julia Gillard in 2010, Labor proposed a 'regional processing centre' in East Timor to (among other things) save the lives of asylum seekers at sea, but which partly recalled the more punitive Nauru solution of the Howard government. Tough new people-smuggling offences were also introduced. The Labor government's formal support for human rights law—though stopping short of a federal bill of rights—was increasingly undercut by its poor performance in practice, particularly in relation to vulnerable, unpopular foreigners.

Conclusion

The history of Australian human rights foreign policy in the developing world is layered and chequered. Australia's most consistent contribution has been in the area of socio-economic rights, delivered through its aid programme since the 1950s, and in its support for decolonisation—but often within strategic limits. During the Cold War, a premium was instrumentally placed on civil rights and political freedoms, in ideological opposition to communism, although there was long a double standard in the discriminatory treatment of both indigenous Australians and Asians. Greater engagement with multilateral human rights frameworks and institutions came with the Whitlam, Fraser, Hawke/Keating and Rudd governments, while there was a degree of retreat evident under the Howard government.

Most Australian governments have pursued human rights goals to an extent through the institution of the Commonwealth, and have participated actively in numerous UN peacekeeping operations worldwide. All Australian governments since the early 1970s have had considerable human rights successes and failures; all

have pursued bilateral initiatives to one degree or another; and most have sacrificed human rights at some point for other strategic objectives, particularly in relation to China and Indonesia. At the same time, strategic or security imperatives have also brought incidental human rights dividends, as in Kuwait, East Timor and the Solomon Islands.

Human rights diplomacy has brought international respect to Australia, even if it has sometimes come into conflict with other objectives in the areas of politics, defence, trade, investment, or tourism (Harris, 1987, pp. 15, 17); and even if there has often been disagreement about the most effective methods. Australia has tended to avoid religious crusades against rights violators abroad (Harris, 1987, p. 19) and has been less ideological and moralising than American diplomacy, even while appealing to similar values. It has helped that Australia has not carried the same baggage as Britain (as a former colonial power) or the United States (as the current hegemon), bringing Australia a comparative advantage in the 'soft power' of human rights.

Some Australian governments have been more active than others, although activism does not always equate with improved outcomes (Hasluck, 1948, p. 178). Australia has been most engaged with human rights issued abroad when it has simultaneously confronted its own domestic problems (Kent, 2001a, p. 258); one can confidently throw stones from one's own glass house if the windows have already been thrown open. Too often, however, Australia has been silent or mute, or has employed ineffective methods in relation to a host of human rights problems abroad.

An active and effective human rights foreign policy is an expression of the social values that are important to the Australian community, its political life and collective identity. Even within the *realpolitik* limits of what is possible for a medium power such as Australia to accomplish, there remains room for the articulation of a more comprehensive human rights foreign policy (Lynch, 2009). Any such policy depends foremost on a genuine political commitment to prioritise human rights in foreign policy rather than to regard them—as is often too common—as peripheral to other strategic interests.

What might such a policy look like? First, for a relatively small power such as Australia, the greatest opportunity to influence the human rights situation in developing states is by collective action through the multilateral mechanisms of the UN, where the concentration of peer pressure is a powerful means of effecting change to protect the vulnerable. That necessitates taking stands on principle, including against Australia's 'friends' or trading partners, in order to maintain credibility among developing states. One of the most significant immediate policy changes Australia could make to signify its support for human rights in developing countries would be to strengthen its advocacy (and voting) in favour of the protection of human rights in Palestine, which would bring reputational dividends for Australia well beyond that particular dispute.

Second, Australia could establish an office for international human rights monitoring with the expertise, capacity and resources to identify and prioritise foreign human rights problems that Australia is well positioned to address. Such an office could operate as a focal point within government for formulating policy positions, advising government on appropriate responses (including when to escalate towards targeted sanctions or breaking off diplomatic relations as last resorts), and crafting bilateral representations and multilateral interventions on country-specific

and thematic human rights issues. It should also draw on independent expertise from outside government, given the problems of bureaucratic capture and the pressure to relegate human rights to second- or third-tier priorities.

Third, to bolster the effectiveness of such a mechanism, Australia could appoint a fully accredited, roaming Ambassador for Human Rights and International Justice with a mandate to represent Australia's human rights concerns internationally and to engage in high-level dialogue with foreign governments. Such an appointment would signal to other countries the importance of human rights to Australia's foreign policy and provide a readily comprehensible focal point for Australian activity in the area. At the same time, human rights concerns should remain integral to the engagement of all Australian foreign missions and diplomats in Australia's relations with other countries, so that the Ambassador for Human Rights is not seen as a tokenistic side-lining of human rights.

Fourth, Australia's foreign aid programme should adopt an explicit human rights approach to its development and technical assistance activities, including through law and justice sector reform initiatives. In a related fashion, military, police and law enforcement training and cooperation provided by Australian bodies (such as the Australian Federal Police, security agencies and the Australian Defence Force) should include express human rights components, particularly in sensitive areas such as counter-terrorism or counter-insurgency. This would also help to address concerns that foreign agencies trained by Australia—such as Indonesia's anti-terrorism 'Detachment 88'—have committed serious human rights abuses.

Where multilateral efforts, quiet entreaties and constructive diplomacy fail to ameliorate human rights violations, a democracy such as Australia must be prepared to protest publicly. Persistent violators must be identified, criticised and shamed. Speaking out generates a culture of ideas, legality and respect for rights that raises the social and diplomatic costs of violating them. It constrains the zone of what is perceived to be possible and legitimate by other countries, producing normative effects that constrain behaviour quite apart from whether concrete sanctions are or are not taken in a given case. For Australian human rights foreign policy is ultimately animated and underpinned by a belief that powerful, good ideas can change the ugly reality of human rights abuses, at home or abroad.

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