From Peacekeepers to Slave Traders: An Australia's Journey to the UN and Beyond

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AN AUSTRALIAN’S JOURNEY TO THE UNITED NATIONS AND BEYOND
Robinson, formerly President of Ireland and then-UN High Commissioner for Human Rights. In that capacity she was directly involved in the development of new international laws and policies on human trafficking and in advising and supporting more than forty countries in developing effective criminal justice responses. Since leaving the UN, she has continued that work with the Association of South East Asian Nations (ASEAN) and its Member Countries including Thailand, Cambodia and Burma (Myanmar).

In her address to the New York chapter of the Law Council of Australia, Dr Gallagher reflected on her experiences within the United Nations human rights system. “Today, the credibility of the international human rights system is being severely tested as it confronts contradictions and paradoxes that lay bare the fragile consensus on which it is built,” she said. “How countries of influence, like the United States and Australia, confront and combat the most pressing and controversial human rights issues will define our global standing for decades to come.”

Address by Dr Anne Gallagher AO - “From Peacekeepers to Slave Traders: An Australian’s Journey to the United Nations and Beyond.”

I’ve been asked to talk a little about my own career path in the field of international human rights law; and also to reflect on the role that Australia has played in this area over the years. In many respects these are two very different topics, but I will combine a few stories about myself and my experiences with some broader reflections on how Australia contributed to the evolution of the international human rights system and on the role that we could (and perhaps should) be playing in protecting it from both erosion and outright attack.

Australia at the United Nations

Let me begin by saying a few words about Australia’s role in shaping the post WWII world: a world that included, for the first time, a truly global organisation dedicated to peace and prosperity for all nations; and a world that formally recognized the idea of inalienable human rights.

When I speak of ‘inalienable human rights’, I mean:

• first of all, rights that are not granted by states, but that are vested in individuals by virtue of their humanity;
• second, rights that cannot be denied on the basis of race, sex or religion; and
• third, rights that can’t be taken away on the whim of someone or something more powerful.

It’s so easy today for people like us to take these ideas for granted; to accept them as a given. But I think that would be a terrible mistake. These ideas are still new; they are still fragile. They fly in the face of human history, which has always accepted the domination of the weak over the strong, the rich over the poor.

The idea of human rights is a dangerous and radical one, because it is about the redistribution of power. Quite simply, human rights is about taking power away from the strong – from those who have too much – and giving power to those who don’t have enough. Human rights involves taking power from states and giving it to individuals, taking power from men and giving it to women, and taking power from majorities and giving it to minorities.

History, and our own experience, teaches us that human beings do not give up power easily. Once we understand that, we also come to understand that the struggle for human rights is not a one-off battle. It is, rather, a slow chipping away at structures, attitudes and behaviours that have defined the human condition and human relationships, for a very long time.

I think those brave and visionary Australians who played a role in shaping the early international human rights system understood this very well. People like Dr Herbert Evatt, who along with a group of robust postwar politicians, bullied bigger and much more important countries than ours into agreeing to the inclusion of human rights protections in the Charter of the United Nations (UN).
He didn’t stop there. As head of Australia’s delegation, Doc Evatt was directly involved in the drafting of the Universal Declaration of Human Rights. It was under his stewardship, as President of the General Assembly, that the Universal Declaration was adopted in 1948. That moment was truly historic. I think it was the first time, and probably the last, that a victory for human rights was greeted with a standing ovation in the General Assembly. It’s impossible to capture the energy and enthusiasm of that moment but Doc Evatt’s proud announcement gives some indication. He predicted that, in the future,

... millions of people: men, women and children all over the world would turn to this first-ever declaration of human rights and fundamental freedoms for guidance.

Even back then, it wasn’t just the men who were influencing the shape of the international human rights system. There was one woman on the Australian delegation to the UN Charter negotiations. Her name was Jessie Street.

Elizabeth Evatt, the great Doc’s niece and a leading human rights practitioner and advocate in her own right, tells the story of how Jessie quickly banded together with the small number of other women who were at the conference. Their goal was to make sure that the preamble to the Charter recognised the equal rights of men and women. Jessie and the other women knew only too well that, when women are not mentioned expressly, they are likely to be excluded. They won, but that victory certainly wasn’t inevitable. Jessie’s battles didn’t end there. The first draft of the Universal Declaration began with the proud words: ‘all men are brothers’. The words we have today, ‘All human beings are born free and equal in dignity and rights,’ are a fine testimony to Jessie and her inspired, resourceful colleagues.

Career path at the UN

In 1992, 44 years after those momentous events, and at the end of a long series of nail-biting examinations and interviews, I was offered a job – a career – with the UN.

It was the most exciting moment of my young life. The fact that I was Australian and that I would be working in human rights made things even better. I knew of Australia’s proud history; about Jessie Street and Doc Evatt and the many distinguished Australians who had followed them. I knew, or thought I knew, that our young, vibrant country was behind the UN all the way. I knew that Australians were widely appreciated for their sense of fairness and their preoccupation with justice. Unlike many other countries, Australia could almost always be counted on to suppress its own narrow self interest for the greater goal of human rights and basic freedoms. The thought of being able to continue and be part of that tradition was exhilarating.

There is nothing quite so absolute and righteous as a 20-something human rights lawyer and the 12 years I served in the UN taught me some valuable lessons in humility. It also taught me to separate the idea of the UN from the reality. This is an institution built by States and run by individuals. Like States and like people it has great weaknesses and frailties, as well as great strengths. An overdue dose of reality did not, however, dim my faith in the idea of the UN – the idea that ‘we the people’ (in the words of its Charter) can join together to prevent war, to promote prosperity and to protect human rights.

From the first day, I took those words to heart in my work. In my first few years I was given far more responsibility than my experience and maturity warranted. Of course, this is a judgment that I’ve made in retrospect. At the time, it never occurred to me that I likely knew much less than the people I was so eager to help. We were racing around the world teaching police, prosecutors and judges all about integrating human rights into their work. As if we knew.

It was an exciting time to be at the UN. The new criminal tribunals that would lay the foundation for an international criminal court were hard at work. The issue of violence against women, silenced so effectively, for so long, was now firmly on the international agenda.
And the 1990s was the decade of peacekeeping. During those 10 years the UN set up its biggest-ever peacekeeping operations, in the Balkans and Africa. Peacekeepers were no longer just soldiers but also civilian police. Their job descriptions expanded beyond providing a buffer zone to supporting communities and even protecting human rights.

During those first few years at the UN, I was involved in developing the first-ever human rights training program for peacekeepers. Our guinea pig was the UN Operation in Mozambique. Today, almost all UN peace operations have a human rights team. Protection of human rights is a core responsibility of all peacekeeping staff. It doesn’t work perfectly but it’s a different world to 1994.

In 1998, when Mary Robinson became High Commissioner for Human Rights, she brought something that, at least for me, was completely new to the UN. The new High Commissioner did not, unlike her predecessors, consider herself a servant of the States. Her constituency was captured in the first six words of the Charter: ‘We the People of the United Nations’. Mary Robinson didn’t pander to any country or regional group. For her, the rules of international law, and principles of justice and rights were what mattered. It didn’t come as a great surprise when the member states of the UN, led by the United States, refused to renew her mandate.

I need to make a small detour here to give you a short cameo of my other UN hero, a person whose time with the UN was also cut too short. Dag Hammarskjold was the second Secretary-General. A quiet, Swedish diplomat, he was the son of a Prime Minister and came from a long line of public service. The Security Council appointed him as a ‘safe pair of hands’. The euphoria of the first days of the UN had faded as the Cold War began to dominate global politics. The big powers were looking for a technocrat who would not rock the boat. Well, Hammarskjold proved to be more of a ‘General’ than a ‘Secretary’. He interpreted his mandate in a way that gave him quite sweeping powers. He began to involve the UN in conflict mediation and to hasten decolonization. This caused great tension with both Cold War powers, as well as with their allies. Hammarskjold was the only Secretary-General to die in office, when his plane crashed during a peace mission to the Congo. He was a brave man. I imagine how sad he would be to see what has become of that country. Especially him: someone who believed that freedom from fear is the true essence of human rights.

I could only read about Hammarskjold but I was able to work with Mary Robinson. Very soon after her appointment, I was asked to take the lead on the issue of human trafficking: a hidden human rights abuse that Mary Robinson had begun to come across on her travels to Eastern Europe and South East Asia. The timing was perfect. After fifty years of inactivity member states had decided to develop a definition and draft a new international treaty that would prohibit trafficking and set out a series of obligations on states to deal with it. The years 1998–2002 passed in a blur as we worked to make sure this new treaty, and the other instruments it generated, actually worked to advance the human rights of people being exploited for profit. It was a heady time and I feel very proud to have had the chance to learn, from Mary Robinson, real lessons about the politics of international law making.

Mary Robinson’s departure coincided with my own decision to leave. I had wanted to work at the UN since I was 12. The experience had been disappointing, frustrating and immensely rewarding, almost in equal measure. The permanent contract had become a gilded cage. It was time to go.

Australia’s changing UN role

During that twelve-year period, while my illusions about the UN were slowly being dismantled, I was also learning some uncomfortable truths about Australia. I don’t think my initial enthusiasms were
completely misplaced. While Doc Evatt’s visionary approach of 1948 had quickly given way to the realpolitik of the Cold War, there was always a strong sense of us being in front of the pack. We may not have been Norway but we were at least as good as Canada and much, much better than the United States.

Australia’s relationship to the UN’s human rights system took a sharp turn in 1996. Previous governments may have had their reservations about certain aspects of that system but the Howard Government made their distrust very clear. Things became worse as Australia came under heavy criticism from the human rights bodies for its policies towards asylum seekers and its failure to address the situation of indigenous peoples. Those were bleak years and not just for me. I can only imagine how hard it was to be a diplomat forced to front up to one of the human rights treaty bodies; or, even worse, to be a government lawyer, trying justifying a farce like the Tampa incident. In 2000, after one bruising personal encounter with the Race Discrimination Committee in Geneva, Foreign Minister Downer infamously, and rather ungraciously announced:

If a United Nations committee wants to play domestic politics here in Australia, then it will end up with a bloody nose.

The legacies of those days are still with us. For example, the Howard Government’s decision to not ratify the Optional Protocol to the Women’s Convention, which allows for an individual complaints procedure, has not been overturned. A new government has not changed our rather abysmal record of implementing decisions and recommendations of human rights bodies.

But things are certainly different. Australia has ratified the new disabilities Convention; and has issued an open invitation to the UN special procedures to visit. The Australian Aid program can, once again, openly advocate a rights-based approach to its work. When Australia won a seat on the Security Council, the Government committed to using its position to be: ‘a principled advocate of human rights for all.’ It will be interesting to see how this commitment plays itself out in the years ahead.

Flashpoints and opportunities

I want to finish up by just briefly outlining what I see to be the human rights flashpoints of the next few years.

First of all, I think it is important for us to realize that ours is a very different world. The energy, enthusiasm and commitment for human rights that saw the adoption of the Charter, the Universal Declaration, and a raft of human rights treaties, have long since dissipated. We should be very grateful to have these instruments and the procedures attached to them, because there is no doubt they would never get through if proposed today. The past decade has confirmed this absolutely. It is sobering to think about just how quickly after 9/11 governments were able to roll back established rights in the name of ‘national security’:

• the right to privacy;
• the prohibition on arbitrary arrest and detention;
• even the prohibition on torture.

It’s even more sobering to think about how quickly and easily we rolled over and let this happen.

Someone once described the development of the international human rights system by states as being like a fox building a henhouse. The fox knows that it’s wrong to eat chickens. He agrees chickens should be protected. But he also realizes that one day he may be very hungry and need to get in. So, the henhouse includes a few gaps and weak points, just enough for a hungry fox to wriggle through.

I think that the henhouse of the international human rights system has turned out to be a little stronger than many governments would have wished. Our job in the future will be less to expand what is there than to try and preserve what we have from erosion and attack.

And the human rights movement itself will need to be more reflective and thoughtful if it wants to preserve credibility and relevance. One of the tenets of that system is that all human rights are equal. It follows that there can be no conflicts between rights.

But we know this is not true. For example, freedom of religion and belief can and does conflict with the rights of women and the prohibition on discrimination. It is no surprise to me that those most preoccupied with curbing the freedom of women are the most aggressive proponents of freedom of religion.
And what about the prohibition on discrimination itself? How far does that go? I’m sure many of you have been following the recent debates in Australia over the question of whether merely offending someone on the basis of race, religion or sex should be regulated by law. For me, one of the most interesting aspects of this debate was the way it played out between the ‘left’ and the ‘conservative’ sides of politics. Certainly it confirmed my belief that both sides are lazy and unreflective when it comes to human rights.

- For the right, any attempt to expand human rights protections is, almost by definition, something to be resisted.
- For the left, expansion is always good. The more human rights and the deeper their reach, the better.

We should all be resisting this reductive and simplistic analysis.

- One can be a staunch defender of human rights and still believe that the state has no right to interfere in the minutiae of human relations.
- For that matter, one can be a staunch defender of human rights without necessarily believing that the solution to our ills is an expansion of the concept of discrimination, or indeed, a judicially supervised bill of rights.

Much more important is the substance of the issue. What are the human rights problems that we are trying to solve? What tools can we use to solve them? Law is one tool in a much bigger kit. We lawyers in particular need to remind ourselves that law can be a very crude way of trying to change attitudes and behaviour.

I’ve touched on a couple of challenges: the threat to human rights posed by the ‘national security’ imperative; and the question of very real conflicts between rights. These are urgent and important issues that we can’t afford to ignore or minimize.

**Slavery and freedom**

But I do think it is possible to finish up on a positive note. I do believe there is one area of human rights where progress is being made: steadily and in a way that will prove impossible to reverse.

It is a happy coincidence that this is in my area of work.

When I first began to study and work in human rights, the issue of human exploitation was not even part of the conversation: forced labour, bonded labour, servitude, sexual exploitation, forced marriage, all these concerns were off the table. At least in relation to these practices, the sovereignty of states appeared to be impermeable. All that has changed. Today, it is politically impossible for any state to defend exploitation of foreigners or nationals within their territory as not being the business of the international community. It is also impossible for states to hide what is happening:

- We now know about forced labour and the sale of girls in China.
- We now know the extent of bonded labour in India.
- The exploitation of farm workers in the southern states of the US is common knowledge;
- The use of debt bondage to exploit Thai and Korean women in the Australian sex industry is not just the stuff of tabloids, it’s gone to our High Court.

The link between all these practices is the denial of freedom. Whatever their particular manifestations, all have involved taking the freedom away from one person in order to serve the interests of another.

Freedom can be tricked out of someone. It can also be forced or coerced. Sometimes, the capacity to play on vulnerabilities caused by poverty, violence and abuse of human rights is sufficient to be able to take away someone’s freedom.

I think that in relation to all human rights issues, freedom is the most appropriate starting point, from which we should be thinking and working. Not least because it expands our view of what is important and what can be done. Freedom is not just about the people we are working to liberate, it is also about us.

Nelson Mandela said it much better than I ever could:

> For to be free is not merely to cast off one’s chains, but to live in a way that respects and enhances the freedom of others.

In the case of modern slavery, it’s easy for us to be horrified while absolving ourselves of direct responsibility. But that is wrong. As Nelson Mandela said, true freedom is not just about the shackles and chains of others, it is about how we live.

Human exploitation has built our world and continues to drive global economic growth. Cheap labour, cheap sex and cheap goods are woven into the fabric of our national economies, our communities and our individual lives. It’s sobering to wonder just how big our individual ‘slavery footprint’ might be.

In his address to the British Parliament, that signalled the end of the transatlantic slave trade, William Wilberforce used his gifts as an orator and writer to win minds and hearts over to the cause of equality and freedom. Wilberforce said something in that address that has stuck with me throughout these past 20 years. It has particular resonance for the issue of modern slavery but in fact can be applied to all issues of justice and human rights. I give the last word to this remarkable man:

> You may choose to look the other way but you can never say again that you did not know.

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