

AUSTRALIA'S FUTURE IN THE UNITED NATIONS

Our signature and approval of the United Nations Charter in 1945 heralded to the world that, thenceforth, at least, Australia was an independent nation, free of imperial ties and able to deal with other nations on an equal footing. It signified the birth of a nation.

I was a teenager during World War II. Through radio and the daily press teenagers' minds were constantly absorbing the events and effects of the gargantuan struggle which had enveloped our country.

It left a massive impression on our minds about the horrors, devastation and futility of war. But it was not enough to win the war. The world had to win the peace.

The emergence of the United Nations assured us that something was going to happen. What was equally important to us was that Australia mainly through Dr Evatt had played a pivotal role setting it up.

Those countries which established the UN obviously knew that national interest could sterilise its efforts to remove the scourge of war. The cold war and Korean War quickly made that clear.

We are now faced with a world where the naked pursuit of national interest, fundamentalism, terrorism, racism, corruption, genocide, disease, the spread of nuclear weapons and over population could, unless stemmed, gradually undermine the rule of law and make large parts of this world ungovernable.

Is the United Nations therefore a body which can never succeed because its goals have set the bar too high?

In truth goals which seek to rid the world of the scourge of war, sustain and develop a basic faith in fundamental human rights and the dignity and worth of the individual, the equal rights of people and nations, to pursue justice and respect for international law and promote social and economic wellbeing, on analysis, do no more than lay down the conditions on which humanity's survival depends. If we do not actively pursue these goals we face a chaotic and lawless future. We have all become interdependent.

Pessimism however need not overtake us and our being here today to celebrate the United Nations is by no means futile.

There are positive signs that the ideological differences between the most powerful nations are mellowing. There is also much to be said for the view that fundamentalist nations, some of which embrace terrorism as a weapon, may temper their attitudes if the political, economic and social conditions of their peoples and others like them can be substantially improved.

It is also becoming increasingly clear to us that war is no longer an answer to any of our problems and that the developed nations must, of necessity, afford developing nations a greater share of trade development and greater aid funding. I

believe therefore that an increasing concern for others and a growing realisation that survival depends upon it will work towards our finding solutions.

Dr Evatt's aim was that Australia should be seen as a middle ranking power. I think we have long since clearly achieved that goal. In my experience Australia is perceived among nations as a country which takes a realistic and moderate approach to matters facing the United Nations and therefore makes pragmatic common sense contributions to the course of debate, the settlement of decisions and actions to be taken. We have committed ourselves constructively to the work of the UN and made useful and sometimes critical contributions. We have tried to remain conscious of the needs of developing countries and the need to make a more significant contribution. We are respected and listened to and our views are absorbed and used but we need constantly to remind ourselves that it is what we do and not our rhetoric which defines our success among the nations of the world.

It is important to realise that a nation like Australia has much to gain from a commitment to the goals of the United Nations. Our pursuit of them in the past has provided specific significant advantages. There are pragmatic reasons why we should support the work of the United Nations more fully in the future. Surprisingly, some of these advantages can be illustrated through several of my own experiences.

In 1965 I decided I would like to work in a United Nations agency for a while. I was visiting Rome and I approached Mr Kesteven, an Australian and head of the Food and Agricultural Organisation located there. He said the only job available was drafting rules for water rights to assist African countries. He thought I was over qualified for the position but in any event he couldn't offer it to me because it wasn't Australia's turn for employment by the FAO.

He did me a favour. Three years later I accepted the position of Commonwealth Solicitor-General. To my delight I found that one of my tasks was to be Australia's delegate to the United Nations Commission on International Trade Law. This opened up the opportunity to confer on international trade law in New York and Geneva with highly experienced commercial lawyers from other nations for three weeks in each of the following four years.

Established in 1966, this body over its 43 year history has been extremely productive and has adopted many rules, model laws and several conventions which are now regarded widely as facilitating international trade. Among them are the UNICTRAL Arbitration Rules (1976) and Conciliation Rules (1980), the United Nations Convention on Contracts for the International Sale of Goods (1980) and the UNICTRAL Model Law on International Commercial Arbitration (1985).

During my time at UNCITRAL Japan was one of our major customers. On contractual matters, disputes and misunderstandings were arising between Australian and Japanese commercial interests regarding the nature of a contract. Australians, not surprisingly, believed that contracts were binding and had to be observed. The Japanese view was that they should always be re-negotiated if problems arose.

This issue led to a close association between myself and the Japanese delegate, a Professor Michida. As a result we were able to bring into existence in each country a body known broadly as an Australia-Japan Trade Law Association which acted alongside and was supported by the Australia-Japan Businessmen's Co-operation Committee. It gained the support of companies heavily involved in the trade such as CSR and BHP on the one hand and Nippon Steel and Mitsui on the other.

In 1975 I visited Tokyo and the two associations came into existence in the presence of the Presidents of both Nippon Steel and Mitsui. Gradually these associations did much to alleviate the disputes and misunderstandings surrounding contractual relationships. This stemmed from our involvement in UNICTRAL.

Commitment by nations to the principles of international law is a fundamental goal under the Charter. Adherence to them has its benefits.

In the late '60s and the '70s largely due to the presence in the seabed of oil great tension arose between the Commonwealth and the States and between nations over rights to the seabed and continental shelf. In part, our internal disputes led to the fall of the Gorton government.

Internationally, by 1972, issues came to a head between Indonesia and Australia as to their respective rights to the area of sea bed between West Timor of which Indonesia was sovereign and the Australian continent.

I led the Australian delegation to settle the question. The negotiations were preceded by a lengthy study of relevant principles of international law and the geophysical structure of our north-west continental shelf in that area. We were advised that Australia and Indonesia were on different continental shelves and not the same shelf as Indonesia contended.

This was a case of two opposite countries but each, as we saw it, was on a different continental shelf. Under international law, as propounded by O'Connell:

"When the seabed between opposite states is not continuous so that there are in fact two separate geophysical structures the sovereign rights of each coastal state extend, at least potentially, to the limits of the natural prolongation of its own land mass."

This meant that under international law as then propounded Australia's rights in relation to the continental shelf and seabed could extend from our territorial sea to the bottom of the slope where the continental shelf met the deep ocean floor. Its ultimate extremity depended partly on issues concerning exploitability.

The negotiations which took place in Jakarta in December 1972 took several days. The Indonesian delegation was led by Professor Mochtar who later became their foreign minister. We commenced the negotiations claiming that the continental shelf extended to the bottom of the slope in the Timor trough. Indonesia, as suggested earlier, contended that there was only one continental shelf and that therefore a median line should be drawn between our two countries. Ultimately the Indonesian delegation agreed to act on the basis that we put, namely that there were two shelves.

This led to a compromise in our positions and we agreed to a line which, broadly speaking, is along the edge of the continental shelf where the continental slope begins. A seabed treaty was immediately drawn up and executed.

It was important that we did this. When Indonesia assumed sovereignty of East Timor in 1975 the same issue arose in relation to the shelf off East Timor. Mochtar, then Indonesian Foreign Minister, said it was "*taken to the cleaners*" in 1972 and would not accept and declined to draw the line on the same basis in relation to East Timor. Views about the applicable principles of law were changing. The location of the line still remains unresolved and a Zone of Co-operation has been established with the emergence of the State of East Timor.

Clearly the 1972 treaty was a great advantage to Australia applying, as it did, the then more widely accepted principles of international law.

The International Court of Justice

The International Court of Justice is of course the principal judicial organ of the United Nations. Australia on a number of occasions has taken, or appeared in, cases before that Court. Perhaps the most well known and successful of those is the Nuclear Test case which Australia brought against France in 1973.

When the Whitlam government came to power in December 1972 as Solicitor-General I was asked by Whitlam to prepare a case for presentation to the Court to restrain France from exploding nuclear devices in the atmosphere so as to cause radioactive fallout on Australia.

Over the ensuing months a case was prepared and it was instituted early in May 1973. It was an application for interim measures pending the final determination of the matter. France did not appear. After hearing oral argument the Court granted interim measures restraining France from exploding devices in the atmosphere so as to cause deposits of radioactive material on Australia.

The case was then prepared for final argument. Before judgment was given the French government announced that it would be ceasing atmospheric testing in the atmosphere. As a result the Court by majority declined to finally decide the issue. I believe that the decision in 1973 for interim measures had the desired effect on France's actions.

When the hearing on interim measures was over in May 1973 I asked our international counsel, Professor O'Connell QC and Mr Lauterpacht QC how they thought we went. They knew the judges from earlier cases and their judgments and had observed their performance during the hearing. They said they thought we should win but by a small margin, as I recall it, of 9 votes to 7.

When I returned to Australia I was asked in turn by Whitlam how we went. I said, in effect, counsel think we will win by 9 to 7. Shortly after that he addressed the Law Society in Victoria in a closed meeting and said, when asked, "*we think we will win by 9 to 7*".

Unfortunately this was leaked and Whitlam's comment appeared in the press.

This was before the Court gave judgment. When it did it granted Australia interim measures by 9 votes to 7.

Judge Gros, the French judge on the Court, became aware of the newspaper revelation of Whitlam's remarks and he believed that Chief Justice Barwick our ad hoc judge on the Court had leaked it. It took a while for Barwick to clear his name. Little did he know that his cousin was the ultimate cause of his embarrassment.

Decolonisation

On 14 December 1960 the General Assembly proclaimed the declaration on the granting of independence to colonial countries and peoples.

Amongst them were the people of the Cocos and Keeling Islands which had been placed under the authority of Australia by the United Kingdom in 1955.

They were entitled to an act of self determination in due course as to whether they would become an independent nation or remain part of Australia.

In December 1977 I became the Minister for Home Affairs and Cocos was among my responsibilities. It was not long before I was told something of the history of the territory and its governance by John Clunies Ross. I learned, among other things, that he owned most of the Islands, that the islanders worked on a copra plantation he ran and were paid by him in tokens which were used to purchase goods from him. Apart from a large airport and administrative areas run by the Commonwealth he exercised control over the islands and the people of Malay descent who lived there. I also learned that the population was gradually dwindling and that only 200 or 300 people remained on the islands. I was shown a T-shirt which had an Indian Ocean map on it depicting footsteps between the islands and Perth.

Within weeks of my appointment I visited the territory for the first time and met Mr Clunies Ross, his wife and family and was welcomed by them and the people. He was clearly a benevolent and caring person but he exercised a great deal of authority and control over the lives of the Malay people. They were, of course, on his land and were free to leave and go to Western Australia if they wanted to but in practical terms he controlled their lives including the education of their children. He had not interfered with their practice of the Islamic faith.

I decided whilst there that it was neither in the people's interest, facing as they were their act of self determination, nor in Australia's interests that this state of affairs should continue. I told him that I was proposing to go back and advise our government to acquire his land and establish a local council which would take over and run the copra plantation which employed many of the people.

Over several visits I sat down with the leaders of the Malay community and worked out with them the form of an organisation for the future in the nature of a local council.

I decided, however, having witnessed the relationship between Mr Clunies Ross and the Malay people that he should be allowed to retain ownership of his home and the home occupied by his son. I did this because I felt that there may be an emotional bond between him and the people which it may be wise not to disturb for a period.

The council was in due course set up. It established what was, in effect, a common fund into which the limited surplus proceeds from the copra plantation were paid. Also paid into that fund by agreement were the wages of the teachers and those who worked on the airport for the government and who, like the teachers, received mainland wages less tax. If this had not been done the returns from the plantation would not have provided a reasonable wage. This was then distributed by their leaders among the Malay families.

Mr Clunies Ross received \$6.25 million from the Australian government for the land acquired.

This was the system that was in force on the island when I left office in 1981. The Cocos and Keeling Islands people made an act of self determination in 1984 under the guidance of the United Nations Special Committee and chose to remain part of Australia.

Human rights

The Universal Declaration of Human Rights was adopted by the General Assembly of the UN in 1948. This declaration was gradually expanded to cover other human rights.

In the early 1970s the question of human rights and the introduction into Australian law of the UN declaration was a matter of debate. The Whitlam government introduced a bill to establish a Human Rights Commission but it was rejected.

It was part of the coalition government's policy to institute a Human Rights Commission but of more limited scope.

When the coalition came to power late in 1975 I became Attorney General and from that time sought an opportunity to establish a Human Rights Commission.

Late in 1976 a question came before cabinet which, it seemed to me, could be resolved by setting up a Human Rights Commission. There was no submission before cabinet to do this. Nevertheless I suggested that if a Human Rights Commission could be established it would assist the issue which was being discussed. It took little more than 10 or 20 minutes for the matter to be decided and in May 1977 I introduced a bill to establish a Human Rights Commission. I ceased to be Attorney General shortly thereafter but the bill was subsequently revived. It became the Human Rights Commission Act of 1981.

As Minister for Home Affairs one of my functions was women's affairs.

A decision was made to establish a National Women's Advisory Council which could receive cabinet submissions and advise government, including cabinet, in relation to matters affecting women. I decided that the body should be widely representative of Australian women and should not be based on political loyalties. Among those appointed were Dame Beryl Beaufort, its Chairperson, Quentin Bryce, our present Governor General, Wendy McCarthy who has since become active in many areas apart from women's affairs, Jan Marsh who had been Secretary of the ACTU and became a member of the Industrial Arbitration Commission and Evelyn Scott who later became chairperson of the Reconciliation Committee.

The late '70s was part of the United Nations Decade for Women, a Convention on the Elimination of All Forms of Discrimination against Women was to be signed. The Council, with my support, strongly advised the government to sign the convention. After some debate the government agreed and several members of the Council went to Copenhagen to attend a United Nations World Conference of Women to discuss the issues which women faced and to sign the Convention. Dr Affie Adagio was part of our delegation.

Also present were a number of Australian women who belonged to an association called Women Who Want to be Women. When the day came to sign the covenant on Australia's behalf I was confronted by several of them who were attempting to block my entry into the room saying – "*Don't sign it Mr Ellicott, don't sign it.*" It was to no avail. I signed the convention. It was not ratified for some time but it became a basis for the sex discrimination laws that were subsequently passed by Parliament.

Conclusion

There are no doubt many others who have been in government who could recount similar instances of our successful involvement with the affairs of United Nations.

Our participation in the future of necessity must be more extensive than it has been in the past.

Australia has much to gain from the United Nations but also much to contribute to its organisation and efficiency.

The United Nations itself requires reform and there are many pressures on it to do so. The Security Council, trade-offs to obtain votes, the observation of human rights, peace keeping resources and a huge bureaucracy are among the areas for reform. Australia clearly has a role in relation to them.

The most difficult task is the sublimation of naked pursuit of national interest to a common good which extends beyond national borders.