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UNITED NATIONS ASSOCIATION OF AUSTRALIA

ANNUAL YOUTH CONFERENCE

PERTH, WESTERN AUSTRALIA

ST THOMAS MORE COLLEGE  
UNIVERSITY OF WESTERN AUSTRALIA  
WEDNESDAY 10 JULY 1996

**CAMBODIA - REFLECTIONS OF A UN SPECIAL**

**REPRESENTATIVE**

The Hon Justice Michael Kirby AC CMG

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The Hon Justice Michael Kirby AC CMG \*

Until May 1996 it was my privilege, for two and a half years, to serve as the Special Representative of the Secretary-General for Human Rights in Cambodia. My period of service gave me the rare opportunity to see the implementation of specific programmes for human rights protection in a particular country sorely afflicted in the past by human rights derogations.

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\* President of the International Commission of Jurists 1995-. Justice of the High Court of Australia 1996-. Formerly Special Representative of the Secretary-General of the United Nations for Human Rights in Cambodia 1993-96.

It may be of interest to consider my experience and to observe the way in which the United Nations contributes in practical ways to human rights protection.

There are about 25 Special Rapporteurs and Special Representatives working to the Commission on Human Rights. Some have thematic responsibilities (eg summary executions, independence of the judiciary and of lawyers, rights of women). Dato' Param Cumaraswamy of Malaysia is the Special Rapporteur on the Independence of the Judiciary and of lawyers. Others, like myself, have country responsibilities. Most of these lie in the field of "Special Procedures", designed to respond to urgent concerns about reported human rights abuses. My own responsibilities fell under that item of the agenda of the Commission on Human Rights dealing with "Technical Assistance". It derived from a provision in the *Paris Peace Agreements* by which peace was brought to Cambodia after decades of war, revolution, genocide, invasion and resistance.

Entering upon my responsibilities in Cambodia, I was very conscious of the suggestion that there are different priorities for human rights in countries in the Asian region. Some commentators have even suggested that there is an "Asian exception" to the universality of human rights, reflective of the traditional emphasis placed by at least some of the philosophies of Asian societies upon duties not rights; upon the community not the individual; and upon the rule of powerful men of virtue

not the rule of law<sup>1</sup>. One observer has described the debate thus:

"The ideological debate between East and West then, and between North and South now, has ... affected the realisation of [human] rights. In the past, socio-economic rights were seen as requiring a strong state and forceful state action. They were thus championed strongly by the former Soviet Union and Eastern European countries. The countries of the West, on the other hand, sometimes did not even recognise them as rights. This was one reason why the General Assembly adopted two Covenants and not one.

A similar ideological clash is taking place now. Countries of the South, led by China, India, Indonesia and Malaysia, argue that socio-economic rights are equally important as, if not more important than, civil and political rights. Very few of these have recognised socio-economic rights as human rights, though they have spoken strongly in favour of these issues at several international fora. Their views, however, have been given increasing prominence because some of these countries are in the forefront of the economic boom, that is now taking place in the Asia-Pacific region"<sup>2</sup>.

When proponents from the "West" speak of the universality of human rights, perceptive commentators from the "East" point to the imperfect protection, in earlier decades in "Western" countries of rights now claimed to be universal and

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1 *The Confucian Renaissance*, Sydney, 1993.

2 Gomez, "Social Economic Rights and Human Rights Commissions" (1995) 17 *Human Rights Quarterly* at 155, 161-2.

fundamental. Thus women did not secure the vote in England until this century. African Americans did not have an effective right to vote in some parts of the United States until 1965. Homosexual citizens were criminalised and punished in Western countries until even more recently. These points are made to emphasise that perceptions of what are "fundamental human rights" take time. Accordingly, Western countries, and their citizens, should not be insensitive to the different stages at which Asian countries find themselves in the process of "enlightenment"<sup>3</sup>. Their minds should be open to enlightenment which they may receive from other cultures.

Within the resolutions and declarations of the United Nations, the notion of an Asian cultural exception, or of the division of human rights into different priorities, has been rejected. Thus the *Vienna Declaration* of June 1993 affirms:

"All human rights are universal, indivisible and inter-dependent and inter-related ... While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms"<sup>4</sup>.

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3 Statement to the Vienna Conference by the Singapore Minister for Foreign Affairs.

4 World Conference on Human Rights, Vienna Declaration, United Nations Document A/Conf/57/23 para 1/10 n 18.

This is not the place to review at length my work in Cambodia. Every report which I produced contained scrutiny of issues beyond civil and political rights: such as the right to health; the protection of cultural rights; the furtherance of rights to education; and protection of the right to a healthy environment and of the right to sustainable development<sup>5</sup>.

In each of the reports, I called to notice the progress that had been made in the economy of Cambodia. Predictably enough, following the end of war, and the confinement of rebellion to a small area of the country, economic activity began to flourish in Cambodia. With it came job opportunities, educational demands, and a gradual improvement (at least in the cities) of general standards of living. Derelict buildings were repaired to provide office and housing space. Long abandoned canals were restored. A ready measure of economic progress could be seen in the increased number of motor cars and motorised bicycles visible upon every fresh visit to Cambodia. Although economic development is not a necessary assurance of improvement of human rights, it is difficult to provide the

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<sup>5</sup> Report of the Special Representative of the Secretary-General for Human Rights in Cambodia. UN doc E/CN.4/1996/93 (26 February 1996).

environment for respect for the whole range of human rights referred to in United Nations' instruments without the basic necessities that a modern economy can provide. Credit must be given to the Government of Cambodia for promoting at least some of the improvements in the infrastructure that are necessary for modern economic development. Amongst other things, such developments raised the aspirations of those people who are its beneficiaries. They begin to demand reading matter and access to informative, non-propagandist radio and television. They travel, including overseas. They become aware of derogations from basic human rights (particularly in the areas of civil and political rights) in their own country. They organise themselves and lift their voices, in human rights bodies, calling for improvements.

These are the positive sides of economic development which were clearly visible in Cambodia relevant to human rights. But there are negative sides as I observed in my last mission in January 1996.

For example, the protection of Cambodia's environment is particularly important because of the vulnerable eco-system and the damage already done in the region by the large-scale destruction of forest timber and the substitution of large-scale agri-business. The danger of enduring damage to the environment for short-term, and relatively modest, economic returns was presented by me as a challenge to fundamental

human rights because of the potential of such developments to affect, in the long run, the living standards of all Cambodians - indeed all people living in the region served by the river and ecosystem of Cambodia.

During my last mission to Cambodia I visited the province of Rattanakiri in the remote north-east of Cambodia. I received many complaints of the intrusion of foreign-backed developers who reportedly, for a relatively small fee, gained concessions<sup>6</sup>. These allegedly entitled them to clear forest areas, sell the removed timber and substitute palm oil and other agri-businesses to the destruction of the environment of indigenous people who had lived there since time immemorial.

In my last report on Cambodia I also concentrated upon a number of particular ways in which the human rights of women are especially neglected in Cambodia. By reporting this, I do not mean to infer that Cambodia is more hard on its women than other countries of the region in this regard. But one function of the United Nations Commission on Human Rights, and the Special Rapporteurs and Special Representatives of the

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<sup>6</sup> Report of the Special Representative of the Secretary-General for Human Rights in Cambodia. UN doc E/CN.4/1996/93 (26 February 1996) para 90 (page 26).



Secretary-General, is to bring the jurisprudence of the *International Covenants* down to the grass-roots: offering commentary on local practices when measured against the adopted international standards. The aim is to assist the governments of member states and their peoples and to translate to fine language of the international instruments into practical reality. It brings defaulters before the bar of humanity in Geneva and New York to receive praise where it is due but also to answer criticism. Many of the defaulters do not permit any criticism at all at home. Yet, in the United Nations, they have to face and answer it.

The United Nations treaty and human rights mechanisms may not be perfect. But at least they provide standards to measure basic human rights and institutions to scrutinise compliance. They create fora in which people can lift their voices when compliance. It is easy to condemn the weaknesses of the treaty system and of the institutions (including of office-holders such as I, until recently, was). Many of the recommendations I made gained the concurrence of the Government of Cambodia. Some of my proposals will doubtless be overlooked or ignored. A few were expressly rejected. But others, I feel sure, will influence policy and legal development in Cambodia to the improvement of human rights generally and specifically those of women, children and other vulnerable groups.

This is one of the ways in which the United Nations contributes to the protection of basic human rights. The work of the United Nations agencies can also be directed and mobilised in this way in order to target those areas needing particular support and assistance.

I attach to these remarks copy of:

- (1) My last speech on Cambodia to the Commission on Human Rights;
- (2) Cover and index of my last report;
- (3) Response of the Royal Government of Cambodia; and
- (4) Copy of a recent interview in the *Canberra Times* on my work.