AUSTRALIAN NATIONAL COMMISSION FOR UNESCO

UNESCO 50TH ANNIVERSARY DINNER

AUSTRALIAN NATIONAL UNIVERSITY 4 NOVEMBER 1996

UNESCO AND COURAGE

The Hon Justice Michael Kirby AC CMG

AUSTRALIAN NATIONAL COMMISSION FOR UNESCO

UNESCO 50TH ANNIVERSARY DINNER

AUSTRALIAN NATIONAL UNIVERSITY 4 NOVEMBER 1996

UNESCO AND COURAGE

The Hon Justice Michael Kirby AC CMG*

UNESCO 50 YEARS ON

It is appropriate that we should meet tonight on the 50th Anniversary of the coming into force of the legal instrument by which the United Nations Educational, Scientific and Cultural Organisation (UNESCO) was established.

Australia was present at the very beginning. Dr Harold Windham and Mr John Seitz attended the London conference in November 1945 after a 60 hours air journey from Sydney. The inaugural meeting took place in Church House, Westminster.

---

* Justice of the High Court of Australia. Honorary Member of the Australian National Commission for UNESCO. Member of the Jury for the UNESCO Prize for the Teaching of Human Rights. Member of the UNESCO International Bioethics Committee. Member of the Ethics Committee of the Human Genome Organisation.

From it emerged the blueprint for UNESCO's Constitution. Australia became a member on 11 June 1946, being the fifth nation to subscribe, after the United Kingdom, New Zealand, Saudi Arabia and the Union of South Africa. When 20 countries signed the UNESCO Constitution, the new agency of the United Nations came into being[1]. In the first report of the Executive Secretary Professor (later Sir) Julian Huxley, he recorded how it was only a late decision to include science in the title of the Organisation[2]. He emphasised the objectives of contributing to peace and security and promoting the general welfare of humanity. Although UNESCO has had many failings and some failures, it has undoubtedly kept the faith of those who designed it.

My thesis is that UNESCO has, at critical moments, shown courage in the realm of ideas. Courage is a wonderful commodity. It is not always in plentiful supply in international relations. Politics, negotiations, compromise and double-talk are

---

1 Australian National Commission for UNESCO, Background Paper, *Australia and the Founding of UNESCO,* November 1985. See Australian Department of External Affairs Files, series A989-44/735/703/1/1. R Hoggart, *The Idea and Its Servants: UNESCO From Within,* London, 1978.

2 Report of the Executive Secretary, Julian Huxley, on The Work of the Preparatory Commission to the General Conference, 20 November 1946 (UNESCO 1 CVR/2, Annex 1V).

the features of international diplomacy. Naturally, they have their place. But so does courage. Because it can be an assurance of integrity and a banner for the future, I wish to recount three instances of courage which I have seen in my association with UNESCO.

That association began in 1980 when the Hon Wal Fife MP appointed me to the Australian National Commission for UNESCO. I am proud that in this year, the Hon Alexander Downer MP has appointed me, once again, to the Commission. But this time I have been "kicked upstairs" to be an "Honorary Member". That sort of thing happens with the passing of the years.

In 1983 I was appointed to the Australian delegation to the UNESCO General Conference held in Paris at the end of that year. The delegation was led by Senator the Hon Susan Ryan, Federal Minister for Education. The Deputy Leader was the Hon Gough Whitlam. Other members of the delegation included Professor Ronald Gaites, Chairman of the National Commission, Mr Gratton Wilson, Executive Secretary of the CSIRO and Mrs Margaret Whitlam. Mr Laurie Fisher, Secretary of the National Commission for UNESCO was an indefatigable supporter.

The sight of UNESCO Headquarters in the midst of a general conference is astonishing to the newcomer. Here is a

microcosm of our whole world. I was so moved by what I saw that I set on paper a "Delegate's Guide" so that others, coming to such a conference afresh in the future would have some notes of guidance. Re-reading the Guide took me back to the debates and issues of UNESCO at that time. It was just before the United States of America and the United Kingdom withdrew[3].

The report of the Australian Delegation was tabled in the Federal Parliament[4]. It tells of the vast range of UNESCO's activities. My involvement was mainly to do with Commission V. It was here, for the first time, that I became involved in the debate about the rights of peoples. This is the first instance of courage of which I wish to speak.

THE RIGHTS OF PEOPLES

The notion that peoples, as well as individuals, have rights is not new to international law. It is reflected in the *Charter* of the United Nations. It is expressly mentioned in the International

---

3 M D Kirby, UNESCO: Delegate's Guide, Paris, November, 1983.

4 Australia, Report of the Australian Delegation, UNESCO General Conference 1983, AGPS, Canberra, 1984.

Human Rights Covenants[5]. The debate about the content of peoples' rights was in 1983, and still is, a legitimate issue of intellectual exploration. But it was in 1983, and still is, an extremely controversial question. The United Nations is made up of Member States. Yet its *Charter* invokes in its opening words, a higher basis: "We, the peoples of the United Nations ...". For various reasons, in 1983, the United States of America was vehemently opposed to the elevation of the rights of peoples to an importance in the context of fundamental rights. In fairness, this was because it was afraid that the "collectionist" theories of the Soviet Union were embracing the notion of the rights of peoples at a covert means of undermining the rights of individuals. The United States representatives, including in UNESCO, were afraid that the rights of peoples would be a mask to condone anti-libertarian activity by governments and states against individuals - all done in the name of the peoples.

For this reason, it was no surprise at the 22nd General Conference of UNESCO that the United States delegation should move for the deletion of references to peoples' rights, including in the title of the UNESCO major programme[6]. This proposal

---

5 *International Covenant on Civil and Political Rights,* Article 1; *International Covenant on Economic, Cultural and Social Rights,* Article 1.

6 Delegation Report above n 4, 48-53.

was criticised by the Soviet Union. It asserted that if the issue was to be reopened, it would seek to add consideration of matters such as anti-colonialism, neo-colonialism and disarmament. Many African states saw the issue as relevant to the rights of indigenous people in Southern Africa - to self-government and to independence. It fell to me to make the intervention on behalf of Australia. I sought to steer a middle course. I noted the danger that peoples' rights could become a vehicle for the suppression of basic human rights by the state. I suggested that the notion of "peoples rights" was too vague and dangerous because it meant all things to all people. I recognised that the issue of the content of peoples' rights might be little more than the aggregation of individual rights. I suggested that the unhelpful politicisation of the debate obscured the real legal controversy. My position coincided with advice later given to the general conference by UNESCO's legal adviser, Mr Karel Vasak. In the end, the United States withdrew its Draft Resolution. It did so on the basis of an invitation to the Director-General that there should be a more searching reflection on human rights and the rights of peoples.

It was this invitation which led to a series of three meetings convened by UNESCO. The first was chaired by Judge Kéba M'baye of Senegal, a judge of the International Court of Justice. The second elected me to be Chairman. The third, held in Budapest, elected me to be Rapporteur. UNESCO was not frightened off a study of this delicate and sensitive question.

Instead, it performed uniquely valuable work in clarifying the notion of "peoples' rights". Time has vindicated the stance which UNESCO took. The years since 1983 have demonstrated the vital importance of this issue for international law and human rights law. Any Australian travelling to UNESCO Headquarters passes over a multitude of lands in which the rights of peoples present some of the most acute challenges to international peace and security: Australia itself with its Aboriginal peoples. Timor. Acheh, Burma, Kashmir and Punjab, Tibet, Chechnya, the Kurdish lands, Bosnia and the former Yugoslavia, Estonia, Latvia and Lithuania.

Indeed, I claim to be the first person in a United Nations meeting to have predicted the collapse of the Soviet Union. At the first Consultation on the Rights of Peoples I again voiced my anxiety that the notion had to be understood in the context of other objectives of international law, including the preservation of peace and security. At the top table was an under-Director-General of UNESCO, a Soviet citizen and an ethnic Armenian. Referring to his case, I suggested that the time might come when the people of Armenia asserted the peoples' right to self-determination as against the Soviet Union. This suggestion brought merriment to the Soviet and Eastern European participants in the Consultation. I have often wondered what happened to the Armenian official who laughed at the possibility which I raised.

Whereas other organs of the United Nations have run away from the issue of the rights of peoples, UNESCO had the courage to explore it and to provide ideas and guidance about it. For this, I believe UNESCO deserves praise. If the whole United Nations machinery rejected the idea of the rights of peoples, or averted its eyes to the significance of this issue to world peace and security, a vital ingredient in the international legal order would be neglected. Only UNESCO had the courage to begin the long task of exploring this idea. Only by exploring the idea will the solution ultimately be found which respects the peoples' right to self-determination but does so in the context of a stable world order. For its courage, UNESCO deserves our thanks.

EDUCATION FOR HUMAN RIGHTS

More recently I was appointed by the Director-General (Professor Frederico Mayor) to the International Jury for the UNESCO Prize for the Teaching of Human Rights. It was a great joy to participate in the judging of the proposals advanced from every corner of the world. No contributor from Asia had ever won the prize. I was proud to take part in the decision to elect the Human Rights Commission of the Philippines as joint winner of the Prize for 1995. This took my mind back to the earnest debates at the UNESCO conference in 1983 in which Australia had sought to move form the Western Group to the Asian and Pacific Group for UNESCO electoral purposes. We failed in 1983 but succeeded soon thereafter. Now, Australia's participation,

for UNESCO purposes on the group natural to its geography and interests is well established.

I saw the work of UNESCO in the teaching and training of human rights at close hand in Cambodia. Between 1994 and 1996 I served as Special Representative of the Secretary-General for Human Rights in Cambodia. This brought me into close contact with many of the agencies of the United Nations. None of them did I hold in higher esteem than UNESCO. The work of UNESCO was carried out by dedicated officers. It was extremely varied. It ranged from the vital work on the preservation of the magnificent Angkor Wat complex of temples near Seam Reap to the training of journalists in the conventions of a free press.

One of the leaders in the UNESCO effort in Cambodia was Ms Susan Aitkin. She deserves to be honoured by her fellow citizens as she is valued by the people of Cambodia. The work in Cambodia is often stressful. The environment is severe, following as it does two decades of revolution, war, genocide, invasion and isolation. The work can sometimes be dangerous because of the high passions which human rights engender in the fragile society of Cambodia. But UNESCO is there, at the frontline. Skilled experts such as Susan Aitkin are helping in the training of Cambodians in the norms of human rights. This is a painstaking task. It cannot be accomplished overnight. It requires skill and patience. But it also requires courage. I am proud to acknowledge the courage of UNESCO's brave and

determined workers in Cambodia. They are helping to build a new society based on respect for human rights.

HUMAN GENOME

My most recent UNESCO assignment has been as a member of the International Bioethics Committee. This body, established in Paris, is chaired by Madame Noelle Lenoir, a Judge of the Constitutional Council of the French Republic.

I attended, with Mme Lenoir, a conference in Bilbao, Spain, where the issues of the human genome were unveiled to me. This truly is the greatest scientific endeavour in history. It is larger by far than the Manhattan Project which developed the nuclear bomb. It involves cooperation between scientists in the four corners of the world linked by telecommunications. Using information technology they are unravelling the DNA. They are exploring nearly 100,000 genes. They are determining the markers which will identify whether an individual is prone to genetic disorders, whether he or she will become tall, fat, bald, blue-eyed, go on to breast cancer, Alzheimer's or many other maladies to which human-kind is heir.

The Human Genome Project will be the encyclopaedia for medicine in the coming millennium. But it presents many acute ethical and social problems. Do we permit alteration of the human germ-line that will affect future generations? Should we

protect the confidentiality of genetic information or does it belong to the family of the individual? Should employers and insurance companies have access to the information? Should an individual have an absolute right to refuse knowledge of the future? Should we permit parents to design their offspring in such a way so as to avoid unwanted traits or characteristics? Are we truly on the brink of a brave new world in which, by genetic manipulation, a "super-species" of human beings can be developed? Is this desirable or has a protection of humanity been the diversity of the gene-pool? These and other questions are being confronted by the Human Genome Organisation, a private body of scientists. But now they are also being examined by international bodies. The World Trade Organisation is interested because of the economic implications. So is the World Intellectual Property Organisation and the OECD. But only UNESCO is exploring the deep moral and ethical problems which genomic research presents to humanity. As a mark of the importance of the work of the UNESCO Committee, the recent meeting of it in Paris was attended by the French President, Mr Jacques Chirac. He recognised that the genome was the common inheritance of humanity. Whether it should be possible to patent it, in order to encourage medical therapies, is one of the acute questions still to be fully explored.

UNESCO is there. It is at the cutting edge of science. It is dealing with the challenges to human existence which comes in the wake of science and technology. It has not backed away

from controversy. It has acknowledged the importance of the issues. With courage it is there.

CONCLUSIONS

This, then, is the UNESCO I know. It has its faults and its failings. Some of these are inherent in a large and global organisation. Some are inherent in an organisation of fallible human beings. But UNESCO, at critical times and to my observation, has shown courage and a willingness to tackle difficult issues. For this it deserves our thanks and our praise. Fifty years of remarkable achievement in education, science and culture. But the best years of UNESCO lie ahead.