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CAMBODIA: THE LONG HARD JOURNEY TO PEACE AND HUMAN RIGHTS

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Edited by Beechen Goh, Baden Offord and Rob Garbutt

The Hon. Michael Kirby AC CMG

**ACTIVATING HUMAN RIGHTS AND PEACE: THEORIES,
PRACTICES AND CONTEXTS**

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The Hon. Michael Kirby AC CMG**

LIVING IN THE EAR OF HUMAN RIGHTS

As a child at school, I learned about the Second World War, which had then recently concluded. In 1949, I was given a copy of the *Universal Declaration of Human Rights*¹ (UDHR). In those days, Australian school children were taught about the importance of human rights; how observance of and respect for such rights would be a safeguard against further wars; and of the contents of the *Declaration* which Eleanor Roosevelt, René Cassin and their colleagues had lately drafted.

In the course of my judicial service, I was naturally required to give effect to the broad principles of human rights, as expressed in the common law

* Earlier writings by the author on similar themes appear in editions of the *Melbourne Journal of International Law* and in the *Australian Year Book of International Law*, published in 2010 and 2011.

** Justice of the High Court of Australia (1996-2009); Special Representative of the Secretary-General of the United Nations for Human Rights in Cambodia (1993-96).

¹ UDHR, GA Res 217A(iii). The Constitution of the Kingdom of Cambodia 1993, Art.31, states that the Kingdom of Cambodia 'shall recognise and respect human rights as set out in the Charter, the [UDHR], the covenants and conventions related to human rights, women's and children's rights. See L. O'Neil and G. Sluiter, "The Right to Appeal a Judgment of the Extraordinary Chambers in the Court of Cambodia" (2009) 10 *Melbourne Journal of International Law* 596, 606.

and statute law of Australia. The impact on the common law of universal human rights was demonstrated most vividly in 1992 in the decision of the High Court of Australia in *Mabo v Queensland [No.2]*². In that case, which recognised for the first time the right of indigenous Australians to enjoy a legal claim to their traditional lands, the international principles of human rights were invoked in the Court's reasoning. They were utilised to overcome 150 years of decisional law which had previously denied such recognition.

In constitutional cases, the invocation of universal human rights to assist in the interpretation of the Australian Constitution, has so far proved very controversial³. Nevertheless, the interstitial utilisation of the principles of universal human rights has been happening. It appears inevitable that this process will continue in Australia⁴. This is an interesting and important development for the law and for justice. Still, it is not the one that I have chosen to address in this contribution.

In addition to my duties as a judge, I have had the privilege, over thirty years, of participating in a number of international bodies and United Nations agencies, concerned with the protection of universal human rights within their several spheres of operation:

- * This involvement began in 1978-80, when I chaired an expert group of the Organisation of Economic Co-Operation & Development (OECD) in Paris. It produced the *Guidelines on Privacy*, which were to prove highly influential on the protection of

² (1992) 176 CLR 1 at 42.

³ Cf. *Al-Kateb v Godwin* (2004) 219 CLR 562 at 581-595 [36]-[73] per McHugh J; 622-630 [169]-[193] per Kirby J (dissenting); *Roach v Electoral Commissioner* (2007) 233 CLR 162 at 177-179 [13] per Gleeson CJ; 219-222 [15]-[171] per Hayne J (dissenting); 224-226 [181]-[182] per Heydon J (dissenting).

⁴ M.D. Kirby, "The Australian Use of International Human Rights Norms: From Bangalore to Balliol – a View from the Antipodes", (1993) 16(2) *UNSW Law Journal* 363.

that universal value of human rights in the law of Australia, as in many other lands⁵.

- * Soon after, the AIDS epidemic arose, I participated, between 1987 and 1990, in the Global Commission on AIDS of the World Health Organisation. That body was concerned to protect the rights of people infected with HIV, or at risk of infection, from stigma and discrimination. And to ensure the access of vulnerable and needy people to the best available health care. Again, our starting point was the right to basic health care expressed in the *Universal Declaration* and in later human rights instruments.
- * In 1991-92, I participated in a commission of enquiry conducted by the International Labour Organisation into the compliance of South Africa with universal human rights in the world of work.
- * Between 1995-2005, I served on the International Bioethics Committee of UNESCO, elucidating the new human rights issues that arise from the advances in biotechnology, specifically from the mapping of the human genome.
- * Now, in 2010-11, I am serving on two international bodies which have been established to conduct investigations concerning the protection of particular human rights. One is the Eminent Persons Group (EPG) of the Commonwealth of Nations. The EPG is examining the institutions of the Commonwealth with a view to ensuring that they are more active and effective in defending the basic human rights of citizens of Commonwealth countries. Relevant to these are the rights to participate in democratic government, to enjoy the benefits of the rule of law, gender equality and other fundamental rights. The other body is the

⁵ Organisation for Economic Co-Operation and Development (OECD), *Guidelines on the Protection of Privacy*, Paris, 1980; cf M.D. Kirby, "The history, achievement and future of the OECD guidelines on privacy" (2011) 1 *International Data Privacy Law* 6.

Global Commission on HIV and the Law, established by the United Nations Development Programme (UNDP). I take part there in an intensive global exercise addressing the reform of the law in United Nations member states so as to uphold the effectiveness of the international efforts to contain the spread of HIV and to ensure the access of those infected, or at risk, to essential health care.

All of these projects, and others that I have not mentioned, illustrate the many ways in which, in the contemporary world, human rights and peace are intertwined. How the *Universal Declaration of Human Rights*, and the many treaty statements of human rights that have grown out of it, influence contemporary understandings and implementation of human rights in many countries, including Australia. These subjects too would be relevant to the issues explored in this book. However, to do justice to their variety and complexity I would require much more space than is allotted to me.

Accordingly, I have decided to concentrate on a particular and somewhat special project in which I was engaged between 1993-1996. This concerned the bringing of peace, security and human rights to a country, Cambodia, after it had suffered under the Khmer Rouge between 1975-1979 some of the most severe disruption occasioned to any land in the twentieth century. For Cambodia, that was a time of war, human rights abuses and genocide. As part of the process of building peace and human rights, I was appointed by the Secretary-General of the United Nations (then Mr. Boutros Boutros-Ghali) to be his Special Representative for Human Rights in Cambodia. It was not an easy time. The government of Cambodia was not always co-operative, either with me or with my successors.

In a lecture, delivered at the Australian National University in 2008, Professor Hilary Charlesworth, a noted expert on international law, raised questions as to the effectiveness of the United Nations 'special procedures' under which the office of Special Representative was created⁶. In effect, Professor Charlesworth asked whether the repeated instances of non-co-operation, that was eventually evident on the part of the government of Cambodia, rendered the system of Special Representatives (and specifically the one appointed to report on human rights in that country) amounted to little more than wishful thinking. Did such procedures afford an oppressive government the *appearance* of human rights compliance and monitoring whereas the *reality* was quite different? Would it not be preferable to terminate such costly charades? Would such a move not expose the autocrats and oppressors of the world to the sharper scrutiny of a more honest international community? Not a world blinded by its own delusions and its well-meaning hopes for progress in human rights which the realities denied?

By reference to the tragic history of Cambodia; the creation of the UN special procedures; and the activities in which I was engaged as UN special representative, I propose in this chapter to explore the subject raised by Professor Charlesworth. My conclusion will be that a number of her criticisms are well made. Eventually, in international human rights procedures, a position will be reached where the United Nations should not lend its authority to wilful oppressors and tyrants.

⁶ H. Charlesworth "Swimming to Cambodia: Justice and Ritual in Human Rights After Conflict", (Kirby Lecture on International Law 2008) [2010] *Australian Year Book of International Law* (forthcoming 2011).

Still, on balance, I am of the view that the Cambodian project and my service as Special Representative were worthwhile. So my purpose is to explain how I reach that conclusion. This is a very modern study in the realities of human rights protection in a world that commonly mixes hope and realism in a sometimes potent concoction.

CAMBODIA: WAR AND GENOCIDE

In colonial times, Cambodia was a protectorate of France. It re-gained substantial independence after the Second World War. However, a series of *coups d'état* in the 1970s deposed its royal government. The serious disruption of the country was precipitated by a war being waged in neighbouring Vietnam by the Viet Cong, first against the French colonial rulers and then against their Western successors, chiefly from the United States of America but also from Australia.

The Khmer Rouge established their regime in Cambodia in 1975. Thereafter, in the five years of their rule, between 1.3 and 2 million Khmer people lost their lives⁷. The regime was brutal and murderous. Very few Khmer did not suffer the loss of family members, particularly if they were educated or in any way connected with the preceding governmental regimes. The years of horror were only ended by an invasion on the part of Vietnamese-led forces. They entered Cambodia from the east in 1978-9. Ultimately, these forces prevailed. They established a new government in Phnom Penh. The residual Khmer Rouge elements fled to the north and east of the country where they remained in control of remote districts.

⁷ See e.g. D. Chandler, *The Tragedy of Cambodian History: Politics, War and Revolutions Since 1945* (Yale Uni Press, 1991); B. Kiernan, *The Pol Pot Regime: Race, Power and Genocide in Cambodia Under The Khmer Rouge* (Yale Uni Press, 1996).

Notwithstanding the military defeat of the Khmer Rouge, the representatives of 'Democratic Kampuchea' retained the Cambodian seat at the United Nations. The failure of the Western nations, who presented themselves as proponents of universal human rights, to recognise the new government in Phnom Penh occasioned a deep feeling of resentment in Cambodia and a sense of betrayal.

Twenty years ago, in 1991, the contesting factions met together and signed the Paris Peace Agreement. This Agreement provided for the creation of the United Nations Transitional Authority for Cambodia (UNTAC). Article 17 of the Paris Peace Agreement expressly allowed the appointment of a guardian for human rights. It said⁸:

“The United Nations Commission on Human Rights should continue to monitor closely the human rights situation in Cambodia, including, if necessary, by the appointment of a Special Rapporteur who would report his findings to the Commission and to the General Assembly.”

It was by this means that the international community hoped to salve its conscience and sought to build a lasting peace based upon principles of universal human rights and trusted institutions. The transition of power in Cambodia was successfully completed. The military wing of UNTAC was led by a United Nations force of peace-keepers commanded by an Australian soldier (General John Sanderson).

Encouraged by this success, the United Nations then took two further steps to bring peace and justice to the shattered country. The first was the creation of a well staffed country office in Phnom Penh, known as

⁸ *Agreement for A Comprehensive Political Settlement of the Cambodia Conflict*, 1663 UNTS 27 (Paris, 23 October 1991), art.17. See United Nations, Department of Public Information, *The United Nations and Cambodia 1991-1995* (UN Blue Book Series, Vol.II, UN, 1995), 93ff.

the United Nations Centre for Human Rights (OHR). This was the first such human rights office created by the United Nations outside Geneva. The second step was the creation of the office of Special Representative of the Secretary-General (SR). As I have said, in 1993, I was appointed to that post.

During the UNTAC period, a national election had been conducted in Cambodia. It was supervised and monitored by the United Nations. It resulted in a successful election with electoral high participation and generally accepted integrity. A national government was formed from a coalition of the Royalist FUNCINPEC Party (led by HRH Prince Norodom Ranariddh) and the Cambodian People's Party (CPP) led by Hun Sen, a one-time minor officer-holder in the Khmer Rouge. Those two leaders became respectively the First and Second Prime Ministers of the new Kingdom of Cambodia. The former titular leader, Prince Sihanouk, assumed the title of King of Cambodia. He held that office as a constitutional monarch throughout my service as SR. He provided consistent support for my endeavours to uphold human rights in the country.

My task was to undertake missions to Cambodia; to investigate the state of human rights in the country; to encourage the development of a human rights culture within the National Assembly, the government, the judiciary, and other organs of the state; and to visit outlying districts pursuant to an orderly programme proposed for my approval by the OHR in the capital. At the end of each mission to Cambodia, I would meet officials of the United Nations agencies working in the country, with relevant responsibilities for particular aspects of human rights (including the ILO, WHO, UNESCO and UNDP). Then, in an intensive period of

activity, working with expatriate and local staff in the OHR, I would draft and settle a mission report on my findings concerning human rights. These reports also contained many recommendations for steps that should be taken to improve the human rights situation in the country.

By the time I commenced my first mission to Cambodia in 1993, the UNTAC peacekeeping force had been reduced from a contingent of thousands of multi-national peacekeepers to but three military personnel. Essentially, therefore, the only sanction that I could invoke, in order to encourage compliance by the government and officials of Cambodia with their human rights obligations as identified by me, was the publication of reports; by participation in media communications; and by an ongoing process of engagement with the OHR in Phnom Penh and with the people of Cambodia and their civil society organisations.

At first, the government of Cambodia adopted a generally co-operative attitude, with the exchange of compliments at the international reporting sessions in Geneva and New York. However, as time passed and as it became necessary for me to report on serious breaches of international human rights law, the earlier amity faded. Within less than a year, the Second Prime Minister (Hun Sen), who was shortly to assert his predominance in the power structures of the country, declined to meet me during my missions. This conduct, and other behaviour by or for the government of Cambodia, made the discharge of my responsibilities increasingly difficult.

Resentment on the part of Prime Minister Hun Sen came to the boil in 1995 when my reports referred to problems of abuse of power by military and police personnel; to serious restrictions on freedom of expression;

and limitations on the activities of civil society organisations⁹. Specially resented were interventions in defence of the rights of an elected member of the National Assembly who had become a political opponent¹⁰.

In the event, my appointment as a Justice of the High Court of Australia, announced in December 1995, required me to resign from the office of SR as from early 1996. In a sense, the appointment was a *deus ex machina*. I resigned with due notice at the end of 1975, completing my last (seventh) mission to Cambodia in January 1996.

Given the non-co-operation on the part of the government of Cambodia; the effective refusal of its leaders to remedy criticism of actions viewed as contrary to basic human rights; and the policy of ignoring recommendations with which they disagreed, several questions are presented: Was the system of 'special procedures', of which I was a part, of any real value to the people of Cambodia? Would it have been preferable, where an obvious policy of non-co-operation emerged, to withdraw the office of the United Nations SR from Cambodia, lest its continued operation should give the false impression that Cambodia and its government were human rights compliant and subject to effective monitoring by independent representatives of the world community? Did my presence as SR give a misleading illusion of effective human rights guardianship which it would have been preferable to avoid?

⁹ United Nations, *Report of the Special Representative of the Secretary-General on the Situation of Human Rights in Cambodia*, submitted pursuant to Commission on Human Rights Resolution 1993/6 – Addendum, 50th Sess, Agenda Item 19, UN Doc.E/CN.4/1994/73/Add.1 (21 February 1994) [26]-[55].

¹⁰ United Nations, *Report of the Secretary-General, Role of the United Nations Centre for Human Rights in Assisting the Government and People of Cambodia in the Promotion and Protection of Human Rights*, 50th Sess, Agenda Item 1, UN Doc.A/50/681/Add.1 (26 October 1995) [10], [13].

SPECIAL PROCEDURES – A CAUTIONARY TALE

Inherent weakness of the system: The starting point in considering the effectiveness of the UN special procedures (or of any other procedures for the protection of human rights by the United Nations that could be created in their place), is an appreciation of the inherent limitations upon what is politically feasible.

When the United Nations was created in 1945, it was originally contemplated that the protection of fundamental human rights would be one of the foundations upon which the Organisation would be established¹¹. Indeed, in the beginning, it was contemplated by some that the *Charter* would include an international bill of rights that would express justiciable rights belonging to the peoples of the member states, in whose name the *Charter* was proclaimed¹². Some critics suggested that the initial failure to achieve this goal left the protection of human rights weak and very vulnerable¹³.

The UN Commission on Human Rights (CHR) was established in 1946 under the Economic and Social Council of the United Nations. In due course, the CHR sought to respond to a number of grave instances of human rights violations about which there was a broad consensus among the members of the United Nations, particularly in South Africa and Latin America.

¹¹ *Charter of the United Nations, Preamble, Arts.1, 55, 62, 68, 76.*

¹² The *Preamble* of the Charter of the United Nations begins:

“We the Peoples

Of the United Nations

Determined ...

Have resolved to combine our efforts to accomplish these aims”

¹³ A. Devereux, *Australia and the Birth of the International Bill of Human Rights 1946-66*, (Sydney, Federation Press, 2005), 28. Cf. M.D. Kirby, “Herbert Vere Evatt, The United Nations and The Universal Declaration of Human Rights After 60 Years” (2009) 34 *UWA Law Review* 238 at 246.

In 1975, following the *coup d'état* which deposed President Allende of Chile, a working group of the CHR was created to investigate evidence about that event. In 1979, that working group was replaced by a 'special rapporteur' of the CHR. He was afforded a mandate to investigate, and report upon, allegations of enforced disappearances of government critics in Chile¹⁴. It was in this evolutionary (and apparently accidental) way that the 'special procedures' of the United Nations actually began.

In due course, the special procedures were extended to a number of working groups, special rapporteurs of the CHR and special representatives of the Secretary-General. However, without recourse to an independent international court with jurisdiction to find conclusively breaches of international human rights law and to enforce its decisions, the procedures for conducting investigations, and making findings and recommendations, were inherently dependent upon co-operation on the part of the countries and officials concerned. Yet many of them were the very subjects of the complaints and reports under consideration of the United Nations.

Given these realities, it is only reasonable to judge the United Nations 'special procedures' in the context of the practicalities within which they were created and presently operate. Although it is true that regional human rights courts have been created since 1945 for Europe, the Americas and Africa and that these, to some extent, fulfil the dreams of those who in 1945 envisaged justiciable and enforceable human rights, the prospect of a truly global human rights court remain elusive. Neither

¹⁴ Explained in United Nations, Office of the High Commissioner for Human Rights, *Frequently Asked Questions About the United Nations Special Rapporteurs*, Fact Sheet No.27, UN Office of the High Commissioner for Human Rights, Geneva, 2001.

the Asian nor the Pacific regions of the world have established a regional human rights commission, still less a court with enforceable jurisdiction. The creation of a world court of human rights appears as far away today as it was in 1948.

Realism therefore suggests that the UN procedures must be measured not against some ideal or theoretical criterion, which presently appears unattainable, but by the standards of the institutions that are in place, or likely to be attained, at least in the foreseeable future. In judging the United Nations, we should not lose our faculty of critical, even sceptical, assessment. But neither should we lose our sense of proportion and practicality, given the geopolitical realities of the world whose nation states make up the membership of the United Nations.

Although the *Charter* might have been proclaimed in the name of the people of the United Nations, the role of the people in the Organisation is little more than symbolic and rhetorical. Not for nothing is the Organisation titled the United *Nations*.

Particular difficulties in Cambodia: I must acknowledge that, in the performance of my duties as Special Representative, there was a gradual, and ultimately steep, decline in the relationship between me and the Royal government of Cambodia.

By 1995, the co-Prime Ministers of Cambodia addressed a letter, to the Secretary-General of the United Nations requesting exploration of the termination of the UN human rights mandate in Cambodia by the end of 1995.

The Secretary-General responded to this request by dispatching to Cambodia his Special Envoy, a British national, Mr. [later Sir] Marrack Goulding (UN Undersecretary-General for Political Affairs). Mr. Goulding managed to restore relations for a time. However, relations soon deteriorated still further. Hun Sen, in a reported public outburst in front of senior officials, declared that I was a ‘crazy lawyer whom [he had] hated as long as [he had] known’ me¹⁵. The re-instituted refusal of the Prime Ministers to meet me during my missions, the public insults and broadsheet attacks on me (and on the then Prime Minister of Australia Mr. Paul Keating and the Australian Ambassador) produced a very difficult situation. To this was added the actual physical danger resulting from death threats launched against me and broadcast by the Khmer Rouge clandestine radio. It was doubtless a cause of relief when I resigned from the post from early 1996.

Each of the succeeding Special Representatives of the Secretary-General was, in turn, treated to a similar regime of non-co-operation; calumny; and demand for replacement. The fourth Special Representative, Professor Yash Ghai CBE, an experienced and respected legal scholar who had played a part in constitutional work for several countries, probably faced the most tumultuous of difficulties. In his last report, delivered in 2008, he said¹⁶:

“I have to repeat many of the recommendations of [sic] the first Special Representative made in his first report, as the government showed little disposition to take any positive action. This state of affairs may raise a question as to whether there is any point in extension of the mandate.”

¹⁵ Reported in N. Carter, ‘Cambodian Leader “Hates” Justice Kirby’, *The Courier Mail* (Brisbane), 8 March 1996, 7.

¹⁶ United Nations, Statement by Professor Yash Ghai, (Statement delivered at the 9th session of the Human Rights Council, Geneva, 15 September 2008, p.2.

Professor Ghai complained about his treatment at the hands of Cambodian officials, but also the lack of effective support that, he claimed, he had received from the United Nations itself¹⁷:

“If the UN Council on Human Rights decided to exact [scil extend] the mandate of the Special Representative, as I would urge it to do, it would be very important that my successor should have the full support of the Council, the UN family and the international community. I cannot say that I had a great deal of such support, and this merely encouraged Cambodia’s Prime Minister, Mr. Hun Sen, constantly to insult me. He called me deranged, short-tempered, lazy, while the government spokesperson, Mr. Khiu Keinereith, called me uncivilized and lacking Aryan culture. Mr. Hun Sen also accused me of telling lies and accepting my appointment merely to get a salary. He described the international human rights organizations and myself as acting like animals. He degraded my country, Kenya, saying it was becoming a killing field and Mr. Khiu Keinereith said that the Kenyans are rude and servants. The office of the High Commissioner for Human Rights, Geneva did not come to my defense and as it also declined to issue a statement explaining that I receive no salary, I was forced to do so in my own name.”

The foregoing chronicle appears to lend support to what I take to be Professor Charlesworth’s central thesis¹⁸. Any ‘special procedures’ created for the international defence of human rights by the United Nations must have practical utility. If such procedures are ignored with impunity, their proponents insulted and left unsupported by the United Nations, a point would be reached when it will be preferable to close them altogether. I accept that. Was that point reached in Cambodia?

THE UTILITY AND IMPROVEMENT OF SPECIAL PROCEDURES

Special procedures and their use: Despite the very obvious

¹⁷ *Ibid.*

¹⁸ After the resignation of Professor Yash Ghai as Special Representative, the mandate of the Secretary-General was not extended. Instead, the Human Rights Council, acting on the initiative of its President, appointed Mr. Surya Subedi of Nepal as a country special rapporteur.

limitations upon capabilities described by Professor Charlesworth, my experience in Cambodia suggests that the existence of the office of SR was useful in a number of respects:

- * In reminding the government and people of Cambodia, in a very public way, of the existence and content of universal human rights; of their recognition of the text of the Constitution of Cambodia; and in their ratification in international treaties to which Cambodia had subscribed;
- * In the support given to non-governmental organisations in Cambodia, which flourished after the Paris Peace Agreement and under UNTAC;
- * In the way that the Office of Human Rights (OHR) worked closely with the SR, providing an effective secretariat for his activities. The SR and the OHR also provided support to and (to some extent) international protection for, the minority voices in society in Cambodia;
- * In the likelihood that many particular issues would not have been raised, or raised effectively, without the appointment of the SR. In my own case, for example, my repeated insistence that HIV/AIDS was an urgent and crucial human rights issue facing Cambodia was ultimately accepted by government officials, medical experts and finally the government itself;
- * Likewise, co-operative efforts to protect and save the Khmer cultural treasures at Angkor Wat and elsewhere in Cambodia represented real and tangible achievements for the United Nations agencies and, through them, for the people of Cambodia themselves; and

- * In the co-ordination of United Nations staff in the defence of human rights which was an important element in the work of the SR.

Additionally, the reports of the SR successively in New York, Geneva and at the conclusion of missions in Phnom Penh, represented not only a voice to the people of Cambodia themselves, but also to the foreign missions, United Nations agencies and international donor agencies operating in the field in Cambodia.

During my time as SR and after, the SR's report was highly detailed. It drew on intensive work performed in the months preceding each mission. In this sense, the SR became a voice to the international community for the OHR in Cambodia. On some issues (such as press freedom and the defence of political speech), the government of Cambodia was intolerant and excessively sensitive of criticism. Yet on other issues (such as land mine clearance, preservation of cultural treasures and, eventually, pursuing HIV strategies), the government was willing to listen and to act on advice. In my experience, it was even anxious to receive technical assistance which the SR could sometimes help to procure for Cambodia. Behind the political events, the important, patient work of the United Nations agencies proceeded. I have always regarded the agencies of the United Nations (rather than political organs such as the Human Rights Commission (now the Council on Human Rights) as the means by which the largest achievements of human rights are generally notched up.

Refining special procedures: I accept Professor Charlesworth's criticisms of the way special procedures are presently organised under

the Human Rights Council. A number of practical improvements could be achieved:

- * There is unevenness in the experience and activity of many SRs. A possible need exists for a more transparent procedure to assure quality appointments;
- * Before entering upon the duties of an SR, it would be desirable that improved facilities for training and preparation should be made available to a newly appointed SR;
- * The Council on Human Rights has lately reduced the number of its country mandates. The geopolitical considerations that influence the election of countries to the Council unfortunately affect the consequent adoption, and maintenance, of special procedures for particular subject areas and particular countries;
- * The Office of the High Commissioner for Human Rights, created since I was first appointed as SR, needs to lend consistent support to SRs. If the complaint of Professor Ghai is even partly correct, he was not adequately supported and that is not how it should be;
- * The improved use of the local and international media is required if the sanction of SR reports is to be rendered effective;
- * The style of report writing by the SR needs to improve. For example, it should drop the use of the passive voice and the usual impenetrable features of much United Nations documentation;
- * The international donor community needs to be engaged more closely by the SRs and called in aid when the going gets tough;
- * SRs should continue to meet together as a group annually; to share experiences; and to explore the common difficulties and potent strategies in discharging their respective missions; and

- * There should be effective auditing of SR reports. The production of a report, in itself, may do nothing to improve human rights. It is the beginning of a human rights process; not an end in itself.

AN EVOLVING INSTITUTION

In the constitutional history of the English-speaking people, it took a millennium for them to advance even to the present imperfect systems of national governance: to ensure free and fair elections; to establish the rule of law; and to assure the (partial) protection of universal human rights. Still many defects remain.

As I have explained, in Australia, it was not until 1992, in the *Mabo* decision¹⁹, that the land rights of the Aboriginal people were finally recognised by the common law. The last 50 years have seen numerous improvements in Australia and the world in the protection of women, of political minorities, of sexual minorities and of prisoners, refugees and other vulnerable individuals and groups. It is not reasonable to expect that everything would immediately fall into place in a shattered, war-torn community such as Cambodia, devastated by war, revolution and genocide. To expect this would be to expect miracles, not attainable realities.

In securing universal human rights, it is essential to adopt an historical perspective whilst at the same time recognising the particular urgencies of the contemporary world. It is natural to be impatient with the institutional weaknesses, inefficiencies and more than occasional instances of governmental and individual hypocrisy, duplicity and incompetence. Yet progress has been made

¹⁹ *Mabo v Queensland [No.2]* (1992) 175 Commonwealth Law Reports 1.

When seen from the perspective of the urgent needs that exist in the world and the terrible sufferings of millions in war and genocide in the last century, the imperfections of the United Nations in the past sixty years are all too obvious. So it necessarily was in Cambodia. Healthy self-criticism, appropriate candour and realistic scepticism are essential and desirable. So is courage, flexibility and imagination. But despair and abandonment are not the way to improve global human rights in practice. I have sought to demonstrate this fact by reference to my particular experience in Cambodia. However, the same could be established by many other instances of United Nations activity, including some in which I have myself been engaged.

Sometimes it is natural to despair. Cambodia particularly often engenders such a feeling. But our commitment to future generations obliges us to persist and never to give up. To be dogged and always to bounce back in the cause of universal human rights. This is the way of the future. Each new generation must accept the duty to press on and to contribute, as best it can, to the noble dream of universal human rights engendered by the UDHR – so as to make the dream a living reality for all in the future.
