

INTERNATIONAL HUMAN RIGHTS AND JUSTICE

FOREWORD

The Hon. Michael Kirby AC CMG

INTERNATIONAL HUMAN RIGHTS AND JUSTICE

FOREWORD

The Hon. Michael Kirby AC CMG*

The years that witnessed the conclusion of the Second World War and the establishment of the United Nations were crucial for international human rights and justice.

The second global conflict in a generation, that caused so much death and destruction, sent a signal that ~~lasting peace~~ the avoidance of war could only be established on sure foundations if international peace and security were safeguarded alongside fundamental human rights. This message was reinforced by the ~~discoveries~~ revelation of shocking cases of genocide and crimes against humanity that appalled human society everywhere. In addition, the detonation of the world's first nuclear weapons indicated clearly that a fresh start to the international order was essential, if the human species and the biosphere were to be preserved.

The *Charter* of the United Nations declared its purposes to be to maintain international peace and security; to develop friendly relations among nations; to achieve cooperation and promote and encourage respect for human rights and for fundamental freedoms without distinctions; and to harmonise the actions of nations so as to attain these common ends. The fact that the pursuit of human rights and conformity with the principles of justice and international law were yoked together in

* Justice of the High Court of Australia (1996-2009); Chair of the UN Human Rights Council's Commission of Inquiry on Human Rights Violations in DPRK (North Korea) 2013-14; Member of the Secretary-General's High Level Panel on Access to Essential Healthcare (2015-16).

the new global organisation made it clear that the world required a sea change in attitudes as well as actions.

Time ran out for the inclusion of a Bill of International Rights in the *Charter*, as had at first been intended. Thus began the concerted action of the United Nations to endorse the *Universal Declaration of Human Rights* (UDHR) (1948); to adopt the International Covenants on fundamental rights (1966); and to elaborate these notions in a series of treaties, institutions and other initiatives. We are still in the midst of the elaboration of these basic principles. But much progress has been made. This book describes, and itself advances, that progress.

My life has accompanied the building of the United Nations and the new world of human rights. As a small child at kindergarten, I sat on the pavement outside my school to watch Eleanor Roosevelt drive by. She was to become chair of the committee that drafted the UDHR. She passed by the school on her way to open the Concord Repatriation General Hospital in Sydney. Later as a boy of 9, in primary school, I received a copy of the UDHR. I lived through the Cold War and the widespread fear of atomic bomb tests. My mind was haunted by the black and white newsreels that had recorded the gruesome images of the Holocaust in Nazi Europe and the stream of frightening images of human cruelty, oppression and indifference.

As a lawyer and judge, I attempted to bring Australian law into harmony with universal human rights, as judges in many other countries were doing. And when my judicial service concluded, I found new opportunities to serve the United Nations. That service is still continuing. It has given me the rare opportunity to see close up the ongoing

attempts to make ~~the~~ United Nations treaty law a reality for ordinary people worldwide. This is why I specially welcome this book; ~~applaud~~ praise its authors; and applaud the prospect that it will plant in the minds of new generations the sense of idealism and urgency felt by many of my generation.

Naturally, the United Nations cannot claim to have invented universal human rights. Their classical origins lie in the natural law theory of Greek and Roman philosophers and jurists. The modern legal tradition may be traced to many sources, including the *Magna Carta* of England in 1215 and the original Bill of Rights of England of 1689. These in turn contributed to the natural rights movement reflected in the American and French Revolutions of the late 18th century. But since the *Charter* of the United Nations, a large number of specialised human rights conventions have been superimposed on the basic human rights structure of the UDHR and the two international Covenants. These have provided more specific protections in relation to racial and ethnic minorities; women; children; migrants and refugees; indigenous peoples; and persons with disabilities. Now, moves are underway to recognise and protect another disadvantaged group: defined by reference to minority sexual orientation or gender identity and expression (LGBTI). In terms of expressing specific and meaningful normative content to all these human rights, and ascertaining relevant scope of the protections afforded by treaty and other law, an impressive body of legal rules, principles and policies has emerged. They constitute one of the most exciting and hopeful of the developments in humanity since 1945.

Adopting treaties and other sources of law is only the beginning of rendering international human rights norms effective. The United

Nations has developed a number of mechanisms to ~~give teeth to~~ render effective the treaties and other sources of law. These include treaty committees; the appointment of special rapporteurs (engaged with thematic issues or specific country concerns); the work of the United Nations Human Rights Council itself, including through the system of Universal Periodic Review; and the conduct of Commissions of Inquiry. In many countries, international human rights law and the decisions of international courts, tribunals, committees and other bodies, have been used by municipal decision-makers to influence their reasoning. In Australia, the United States and some other countries, there ~~is~~ has been some resistance to this tendency. However, the normative content of the law of international human rights and justice continues to evolve. It displays increasing sophistication and the power of persuasive reasoning and good example.

For all these developments, the contemporary world is full of challenges and difficulties. I have witnessed many of these in my work as chair of the Commission of Inquiry on Human Rights Violations in North Korea. That Commission recommended referral of the crimes against humanity reported in its investigation, to the International Criminal Court. This would ~~required~~ a vote of the Security Council. However, prospects of concurrence on the point were frustrated by the opposition of China and the Russian Federation, both permanent members of the Council and entitled to a veto. Nevertheless, the persuasive power of the report of the Commission of Inquiry continued to influence the evolving view of the international community as to what it should do to respond to the grave human rights violations revealed in North Korea. When, in January and February 2016, that country conducted a fourth nuclear weapon test and launched a long range missile with military potential,

the Security Council at last responded strongly. It unanimously agreed upon a lengthy and highly specific resolution (S/RES/2270) condemning North Korea; imposing sanctions; and naming individuals, corporations and vessels subject to such sanctions. This demonstrated at once the possibility of unanimity and the connection between the dual concerns of the United Nations: peace and security and human rights and justice.

Not all cases of international action have been conducive to unanimous outcomes. The Syrian conflict has raged for nearly 5 years. It has wreaked untold damage and misery upon innocent people, mostly civilians, caught up in the conflict. It has resulted in huge migration flows into southern Europe. These, in turn, have endangered border security in the European Union [\(EU\)](#). They have fuelled the growth of extremist political movements within EU member states. The conflict has produced devastating outcomes for human beings, institutions and cultural artefacts of antiquity. These [artefacts](#) have included a Roman temple at Palmyra which survived millennia but has now been destroyed – lost forever to the cultural heritage of humanity.

The Syrian and related developments have also presented challenges to the *Refugees Convention* (1951) and Protocol and to the efficiency of contemporary international humanitarian law and its enforcement. The gap between rich and poor countries widens. In some cases, multinational corporations eclipse in wealth, resources and influence the powers of many nation states. Access to basic justice and to the benefits of scientific and technological discoveries is increasingly tenuous. And on top of these challenges, the world's neglected indigenous populations continue to present challenges to humanity's

conscience, as well as wisdom for our enlightenment in handling the perils of global climate change and ecological destruction.

This book therefore comes at an extremely important and propitious time for the development of the international law of human rights and justice. It offers a scholarly and varied examination and analysis that will be of interest to legal scholars, practitioners, human rights advocates, international diplomats and others who wish to increase their knowledge of human rights and their potential to address the greatest challenges of our time. The expert contributors come with interdisciplinary talent and experience. They include senior university academics; governmental administrators; human rights researchers and policy makers; philosophers; political scientists, United Nations officials; and representatives from civil society organisations drawn from Europe, North America, the Middle East, Africa and Australia. Their contributions have examined a wide range of human rights applications. They have evidenced the pervasiveness of this body of law and practice.

I predict that this book will be of great interest especially for law students and students of international affairs. I have found, in visits to universities, an increasing engagement of students with the issues of international human rights and justice. I have always emphasised to them, the importance of a deep knowledge of about the growing body of applicable law. Passion and commitment are good. But deep knowledge and skills of analysis and the neutral presentation of argument can convert emotion into action. As this book demonstrates, the challenges to international human rights and justice today are so many, so important and so widespread that they require scholarship and descriptive materials of a high order. Converting the growing body of

law and policy into effective international action is a great challenge. This book is a good place in which to confront that challenge and to get ready to answering it.

I applaud the authors, editor and publisher for collecting such a stimulating study of diverse themes. But I urge the reader to keep an eye on the overarching question that the individual contributions present. This is how best to achieve adequate supervision and monitoring as pathways to, and determinants of, justice in today's world. This collection is a valuable addition to the library of those who are engaged with the perennial question of how best to internalise human rights ideals. And how to convert them from aspiration to reality.

Typically, that is commonly the challenge faced by those working on human rights in the field and at the United Nations. But it is increasingly of concern to municipal lawyers giving effect to their own national laws. It is therefore, properly, the legitimate concern of the authors. They are to be thanked for the wisdom and experience they have shared with us. Ensuring that the mind, heart and action are all addressed to building a new world order to protect human rights and to attain global justice, represents the noble dream of Eleanor Roosevelt and those who have followed in her footsteps. To us is given the privilege ~~of~~ and responsibility of continuing that journey.

18 March 2016

Wraith