
UNIT 15 HUMAN RIGHTS

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15.1 INTRODUCTION

Human rights, as an issue in the foreign policy of any country pose certain problems for more than one reason. One, there is the generally prevalent view that human rights fall within the domain of state sovereignty because it is conferred on citizens only by the state. However, it is widely acknowledged that human rights transcend the jurisdiction of the state, as it is an accepted principle in international relations. In other words, the conflict in respect of dealing with the human rights related issues in the foreign policy of countries arises within the jurisdictional boundaries of the state on the one hand and the universality of the principle on the other. This rather difficult and resolvable jurisdictional conflict is reflected in the Charter of the United Nations. Whereas the universality of the human rights is well enshrined in the 1948 Universal Declaration of Human Rights (UDHR), the UN Charter nonetheless recognises the fundamental tenet of the international state system viz. the domestic jurisdiction principle. An assessment of the record of any country in dealing with issues relating to human rights therefore has to be made against the backdrop of the above-stated premise. Keeping these in view, this Unit offers a critical review of the changing perspectives of Australia in respect of its concern on the question of human rights.

15.2 OBJECTIVES

After studying this unit, you shall be able to:

- understand the evolution of Australia's Policy on the issue of Human Rights, and also know how it on the one hand supported non-interference in the cultural matters of the state and on the other promotion of international justice and respect for human rights when the UN was being established;
- analyse Australia's attitude towards the issue of human rights during the Cold War as an ally of the United States and supported regimes which were authoritarian and undemocratic but were anti-communism;
- discuss Australia's position on the issue of human rights since the end of Cold War, as it has strongly supported the implementation of human rights agreements in the right earnest;
- understand Australia's position and approach to the regular problem, particularly in the context of 'Boat People' from China; and
- analyse Australia's policy on the issue of granting 'Asylum' to the refugees.

15.3 GENESIS OF AUSTRALIA'S POLICY TOWARDS HUMAN RIGHTS

Most writers trace Australia's concern with human rights to the San Francisco conference where the basic framework for establishing the UN system was deliberated. At this conference, Australia strongly defended the view that under no circumstances the evolving United Nations system should intervene in matters that are deemed as 'internal affairs' by sovereign member states. However, at the time of drafting UDHR by the UN in 1948, Australia underlined multilateralism as a principle in the international system and sought that the UN should strive to promote international justice and observance of human rights.

Notwithstanding its self-proclaimed commitment to the observance of human rights, Australia remained largely impervious to the universality of the principle during most part of the Cold War years. In fact, in line with the United States, Australia quite often supported authoritarian yet anti-Communist regimes that disregarded observance of human rights. However, beginning in the early 1970s, universal human rights assumed an important element of Australia's foreign policy. In December 1972, Australia signed two of the UN conventions on human rights: The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). However, it may be added that whereas ICESCR was ratified in the same year without any reservation, Australia ratified the ICCPR eight years after in 1980. The delay in ratifying the ICCPR was because of the strong opposition expressed by some of the constituent states of Australian federation. Some of them were of the view that the covenant would impinge on the Australian domestic laws and also pave the way for greater centralisation of the federal authority at the expense of the constituent units of the federation. Yet it may be noted that since the second half of the 1970s, Australia took a significant number of steps that reflected its genuine commitment to the cause of human rights. It was during this period that the incumbent Labour government critically reviewed Australia's performance in areas of women's rights, gender discrimination and indigenous peoples' rights. In an effort to monitor human rights abuses outside, the federal legislature set up the Amnesty International Parliamentary Group (AIPG). In 1981, Australia established a national Human Rights Commission entrusted with the task of looking into human rights abuses and evolving appropriate mechanisms to uphold standards in the practice of human rights within its domestic jurisdiction.

At the same time efforts were afoot to building new institutions and strengthening old ones which could underwrite the observance of human rights within the country and a role for human rights in Australia's bilateral relations with other countries in Asia and Europe. Institutional innovations during this period included the setting up of a separate human rights division in the Department of Foreign Affairs and Trade (DFAT) and a separate budget for funding for human rights organisations. Also, the AIPG was accorded special recognition by DFAT, which took up cases of abuses that were referred to it by the AIPG. Again at the instance of the AIPG, periodic consideration of Australia's human rights record by the Parliamentary Joint Committee of Foreign Affairs, Defence and Trade (JCFDT) was complied with as also the establishment of a Human Rights Sub-committee. The JCFDT in turn made several recommendations relating to the protection and promotion of human rights both by Australia and other countries. In response to these recommendations, the federal government withdrew several of the reservations that it had earlier given for the ratification of the ICCPR. Also, on the basis of the recommendations made by the JCFDT, Australia replaced its national Human Rights Commission by setting up the Human Rights and Equal Opportunity Commission (HREOC) in 1986. The express mandate of the newly set up HREOC was to look into the plight of the Aboriginal and Torres Strait Islanders and other marginalised segments of the society.

15.4 HUMAN RIGHTS NORMS AND AUSTRALIA'S DILEMMA

Without doubt Australia's human rights concerns became intense since 1980s. Successive governments since 1980s articulated quite forcefully the universal norms in respect of human rights. At the same time, they underlined respect for the values espoused by the different countries. Also, the government made efforts to shift the emphasis from basic civil rights to social and economic rights. Admittedly, as some scholars argue, the basis for Australia's concern was both altruistic and self-interested since Australia firmly believed that social injustice and economic inequities would jeopardise international peace and order.

In turn the needed strategy to uphold the principles and norms for abiding adherence to human rights remained an open debate. While the appropriate strategy called for the utilisation of both multilateral and bilateral channels, the question was how to combine the principles of human rights with an approach that is pragmatic in respect of policy overture. Stressing the importance of international human rights standards, Australia sought a multilateral approach. However, given its economic imperatives in forging commercial relations with the countries of Asia, particularly China, its advocacy of international standards had to be diluted. For countries such as China have maintained the position that human rights standards are culturally relative and proclaimed that there cannot be therefore any uniform standards in assessment. Quite frequently, countries of the developing world including China shared the view that developed countries use the human rights related issues as a 'stalking horse' to promote their intrinsic economic and political interests. It is for this reason the developing countries have been arguing in international forums that the issue of human rights has to move beyond the basic political rights towards a more broad-based set of economic and social rights.

In meeting this dilemma between the 'Universalist' *versus* the 'cultural relativist' approaches to the human rights issues, Australia tried hard to maintain that the conflict could be resolved. As Australia's foreign minister Gareth Evans argued that not only Australia should understand and respect the real sensitivities of countries with different cultural traditions but also no less it should get entrapped into embracing cultural relativism. To him, the more important question is not whether to act but how to act in a way that could help evolve the international legal order in respect of human rights.

15.5 ADHERENCE TO INTERNATIONAL CONVENTIONS

Mention was made in 15.3 section of the Unit that Australia in early 1970s adopted two of the international conventions—ICCPR and ICESR. To these may be added yet another international treaty called the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) of 1969 which Australia ratified in 1975 with an enabling federal legislation viz. Racial Discrimination Act. Besides these, Australia also adopted in the decade of 1980 three other conventions—International Convention on the Elimination of Discrimination against Women (ICEDAW) in 1983 following the federal law called Sex Discrimination Act; International Convention against Torture and other Inhumane and Degrading Treatment or Punishment (ICAT) following the adoption of the Crimes Act in 1988; and the International Convention on the Rights of the Child (ICRC) in 1991.

Besides the aforementioned six international conventions, Australia is a signatory to the Universal Declaration of Human Rights (UDHR) under the auspices of the UN and the Convention on Indigenous and Tribal Peoples in Independent States promulgated by the International Labour Organisation (ILO) in 1989. By mid-1990s, Australia had ratified 19 out of 25 UN human rights treaties and had signed 54 ILO conventions and ratified 48. In keeping with these international treaties Australia sends regularly delegations to the UN Commission on Human Rights annual sessions during February and March as also to the Sub-Commission on Prevention of Discrimination and Protection of Minorities session in August of every year. Besides, Australia has taken lead role in such UN resolutions as on the Indigenous Decade, Draft Declaration on the Rights of the Indigenous Peoples, National Institutions and Cambodia. Australia took the initiative in moving a strong resolution on Cambodia. Its draft resolution on the rights of the indigenous peoples won widespread support. Among others, Australia's role in the UN World Human Rights Conference held in Vienna in 1993 and the Fourth UN World Women's Conference in Beijing in 1995 are notable.

Australia's formal recognition of these international instruments is indicative of its positive approach to the universal principles and standards on human rights. In fact, some of the federal laws passed by the Australian Commonwealth Parliament that were passed in the 1970s and 1980s were largely based on these international conventions. The preamble of the Racial Discrimination Act passed in 1975 underlines that it was the ICERD and the obligations thereof that constituted the basis for its enactment. Similarly, references to ICERD are made in the preambles of the subsequent legislation such as the Aboriginal and Torres Strait Islanders Commission Act of 1989 and the Native Title Act of 1993 that focussed on racial discrimination against the indigenous communities of Australia. The federal legislation on gender discrimination passed in 1984 (Sex Discrimination Act) affirms that its objective is to meet Australia's obligations in regard to ICEDAW.

Also, the Crimes (Torture) Act of 1988 and the Human Rights and Equal Opportunity Commission Act of 1996 claim that they would enable the federal government to fulfil the stated objectives envisaged in ICAT and ICRC.

Besides these explicit references in the federal laws, several judicial decisions in the past have invoked these international conventions. One such instance is the so-called *Mabo* verdict, which annulled the *terra nullius* norm of the colonisation of Australia and restored the native title rights to the aborigines. In handing the historic decision, one of the judges invoked the Optional Protocol to the ICCPR and declared that the enjoyment of civil and political rights demands reconsideration. No less are also instances where the Australian judiciary was impervious to these international conventions. One glaring instance is in the case where *Ngarrindjeri* aboriginal women contested the construction of a bridge on their sacred lands. However, the court ruled that that the government's decision was a valid exercise of its authority and therefore cannot be deemed racially discriminatory.

Again, some critics point out that notwithstanding its commitment to the adherence of the principles of human rights, Australia's track record is not all that impeccable. For instance, the Human Rights and Equal Opportunity Commission entrusted with the task of monitoring and reporting on human rights violations and abuses does falter by giving low priority to the reporting process. In respect of monitoring and collecting data there exists little formal co-ordination between the federal and state/Territory agencies. Reporting is delayed and seldom self-critical as much as what is contained in these reports are statements of intention rather than the ground realities.

15.6 HUMAN RIGHTS CONCERNS IN THE POST-COLD WAR ERA

The end of the Cold War and the easing of tension between the East and the West only intensified Australia's concerns in respect of its human rights policy both within and outside of the country. It called for translating into action its human rights objectives both in the multilateral forums and bilateral relations. The reasons for this involvement were obvious. The rigid bipolarity of the Cold War years contained the populations within national boundaries and the question of standards in respect of human rights was deemed as country specific. However, with the end of the Cold War the universality of human rights cutting across national boundaries has acquired significant salience. Together the emergence of ethnic conflicts and the resulting issues in terms of rights and representation of people have underscored the imperative need for nation-states to uphold standards in respect of human rights.

All the more therefore human rights issues in Australia's foreign policy have become critical now than before. Responding to these imperatives, Australia's human rights policy today, as some argue, is factored on the following four basic features—consistency in approach, attention to details, focus on the universality of the rights and willingness to respond and readjust strategy. In terms of the basic principle, Australia now seeks to promote all human rights equally without making any distinction between civil and economic or political and social rights. For evolving such a policy, which is both consistent and non-discriminatory, the strategy devised is to pursue quiet dialogue and persuasion in the context of the broad multi-dimensional relationships.

Such that the defining characteristics of Australia's post-Cold War human rights policy are as follows: i) Australia's stance in respect of human rights is closer to the region it belongs viz. Asia, primarily because it respects as much the economic and social rights as much as the civil and political rights. ii) Its posture is non-confrontational unlike in the past based on mutual consultations with the countries of the region. iii) It combines pragmatism with patience in its bilateral approach and evolves mechanism based on the principle of mutuality and reciprocity. Given these basic characteristics, Australia accords more importance to self-assessment, sensitivity to domestic human rights concerns and above all, consistency with international standards. What is more important is that there also exists bi-partisan support for these aforementioned defining characteristics of Australia's human rights policy.

15.7 BILATERAL INITIATIVES

In the foregoing section the focus was on the defining characteristics of Australia's human rights concerns in the post-Cold War period. Keeping these characteristics in view, an attempt is made in this section to review the initiatives Australia has taken bilaterally with the countries of Asia, importantly Burma, Cambodia, Indonesia and China in respect of its human rights policy in the face of competing geo-economic, geo-political and geo-strategic interests.

Admittedly, Australia monitored and reviewed the human rights situation in these countries emphasising moral persuasion rather than resorting to drastic sanctions and outwardly adopting a policy of consistency. In reality, however, it diverged from its stated policy objectives in a number of ways not only with a country in question but also between the countries thereby departing from its declared goal of taking recourse to multilateral mechanisms.

In the case of Burma, human rights issue assumed critical proportion when the State Law and Order Restoration Council (SLORC) annulled the May 1990 elections and violently suppressed opposition and placed in detention Aung San Suu Kyi, the leader of the National League for Democracy party. Not only did Australia suspend bilateral economic assistance to Burma, with the exception of relief aid to assist the refugees on the borders of Burma, it pursued a policy of minimum dialogue. Australia went further opposing the regional ASEAN members' initiative of 'constructive engagement' with Burma. However, when situation eased with the release of Aung San Suu Kyi in 1995, Australia restored its relations, thereby adopted the strategy of allocating rewards according to the degree of Burma's compliance. Driven largely by its strategic interests, Australia took a lead role in brokering an international effort led by the UN to bring peace and a measure of civil and political rights in the form of free and fair elections in Cambodia. Again in the case of Indonesia, it is the geo-strategic significance of the country—being the nearest northern neighbour, compelled Australia to adopt a less sensitive stance on the human rights abuses and atrocities perpetrated by the Indonesian military in East Timor. At the maximum what Australia could do was to take some *ad hoc* steps, which by no means have brought peace to the troubled East Timor. Or, the other hand, Australia has been able to secure a share in the oil-rich Timor Gap.

If geo-political and geo-strategic considerations explain largely the Australian human rights concerns in Burma, Cambodia and Indonesia, clearly it is the geo-economics factor that dictates Australia's somewhat ambivalent posturing towards China. Two instances may be cited here. The first is the question of Tibet. Notwithstanding the overwhelming Australian community support for Tibet's independence, successive Australian governments have adopted a bifurcated policy of recognising Tibet as part of China but to condemn human rights abuses that take place there. Following the independence riots in Tibet in 1987-89, China mercilessly suppressed them provoking widespread sympathy in Australia for the Tibetans. In response, Australia sent a human rights delegation to China in 1991 and reported expressing concern over the cultural, religious and political repression by the Chinese in Tibet. However, after the coalition government led by John Howard came to power, Australia's Tibet policy was reversed apparently under pressure from China. For, when in 2002 Dalai Lama revisited Australia the government of the day barred him from planned speech at the Parliament House on grounds that China could interpret the event as official recognition for the Dalai Lama as head of Tibet's government in exile.

Regarding Australia's initiatives in respect of the observance of human rights in China, the record is no less noteworthy. Like most of its alliance partners in the West, Australia predictably adopted a stern policy of imposing sanctions on China following the tragic events in Tiananmen Square in 1989 followed by a period of temporary estrangement. In less than two years, Australia changed course. As some scholars have argued the cooling of Australia-China relationship triggered by the Tiananmen tragedy might have prolonged, had not policy makers in Australia felt the need to engage with China on a number of critical political, economic and strategic issues resulting from the collapse of the Soviet Union. Also, the surge in China's economy together with the rather low growth of the Australian economy around the same time prompted policy makers in Australia to forge closer ties with China. With the exception of defence and security visits and sales of defence equipment, most sanctions were dismantled by 1991. At the same time, in response to the domestic concerns, Australia worked in consultation with China to devise a monitoring process to replace the 1989 sanctions.

Described as flexible and creative, the process was known as the 'active monitoring' which in effect set more modest goals than that of the United States. For, the US unilateral monitoring of China's human rights was linked to the threat of the removal of China's Most Favoured Nation (MFN) trading status. However, all that the 'active monitoring' process sought was China's accountability to human rights but on a reciprocal basis. This process of monitoring with China and its relative success in terms of a constructive dialogue persuaded Australia to seek other European countries to emulate its example. China welcomed such a move because in this way it could successfully bilateralise a multilateral process, undermining thereby the ability of the UN Human Rights Commission to monitor China's human rights effectively.

Having failed to bring China to terms through its 'active monitoring' policy, Australia adopted since 1997 what it called the 'quiet diplomacy' which set the stage as a turning point in Australia's policy towards China. This process was neither transparent nor accountable, being conducted entirely in closed doors by government officials. However, it suited the government's inclinations to forge and deepen further its economic linkages with the growing Chinese economy and its own inability to reconcile commercial advantages with human rights. In other words, given its physical location in the Asia-Pacific region with the Chinese economy looming large in recent years, Australia has no choice except to factor its human rights policy on the ground realities of geo-politics and geo-economics. In these compelling circumstances, Australia had to give up its earlier stance on principle and pragmatism and move from multilateral monitoring to quiet bilateral dialogue.

15.8 AUSTRALIA'S APPROACH TO THE REFUGEE ISSUE

No doubt, Australia has benefited as a consequence of the shift in its policy approach towards China—from multilateral to bilateral with the emphasis on civil-political component of human rights. Yet, this skewed policy approach has triggered a domestic human rights crisis with the influx of the so-called 'boat people' from China. This exodus of Sino-Vietnamese people from Beihai in southern China into Australian mainland is largely on account of the inadequate provision of socio-economic rights, a component of the human rights policy, which Australia ignored to monitor in its interest in getting short-term economic gains.

It is not as though Australia welcomed refugees in the past. However, they were largely displaced persons during and after the Second World War. But as part of the nation-building and development strategy, Australia was selective in admitting these people. Again in the post-Vietnam War period, because of Australia's involvement and in active support for the US in the war, the government of the day admitted a substantial number of Indo-Chinese refugees. Even so, beginning in 1980s, Australia adopted a restrictive policy because it feared yet another 'wave' of refugees arriving on its shores. In other words, it suspended the policy of automatic asylum. Besides, Australia terminated providing these 'boat people' with legal assistance and herded them in detention centres for a long period. Consequently, most of the refugees who arrived in Australia by boat from East Asia since 1989 have remained in detention while the government examined their *bona fides* in respect of their refugee status. Subsequently in 1992, the federal government hurriedly put into force the Migration Amendment Act to reformulate the earlier Migration Act of 1958 and thereby prevented the release of the detainees. A further amendment to this legislation was made in 1994 whereby these refugees have been forced to remain in detention centres until they are removed from Australia or granted visa.

Unarguably, the treatment meted out to the refugees in the detention centres and the uncertainties associated with their current and future status not only has attracted world-wide attention but also has raised questions regarding the credibility of the Australian government's commitment to human rights. Critics argue that the current policy measures of Australia in dealing with the refugees are misguided in approach and dubious ethically. What is more, it is in breach of internationally acknowledged human rights standards.

15.9 SUMMARY

This section offers a brief summary of the unit and draws some conclusions in respect of Australia's human rights policy. In the present day world, conceptualisation and evolving policy measures on human rights clearly transcends the jurisdictional boundaries of individual nation-states. Precisely for this reason to treat the issues of human rights in the realm of foreign policy poses a particular problem as it is uneasily located at the same time between domestic and international jurisdiction. Whereas the universality of the human rights

is well enshrined in the 1948 Universal Declaration of Human Rights (UDHR), the UN Charter nonetheless recognises domestic jurisdiction principle making it difficult for any one state to impose its views on the other in respect of human rights.

Yet, like most other countries, Australia too subscribed to the objective principles of the UDHR and over the years has ratified many of the international treaties relating to human rights. At the same time, in line with its treaty obligations Australia, among others, has set up the Human Rights and Equal Opportunity Commission (HREOC) in 1986 replacing the earlier national Human Rights Commission and followed it up by introducing enabling enactment. The HREOC replacing the national Human Rights Commission is entrusted with a variety of tasks such as monitoring and reviewing Australia's performance in the realm of human rights practices and also to evolve appropriate mechanisms to uphold standards in the practice of human rights within its domestic jurisdiction. At the same time, it has taken steps to build new institutions and strengthen old ones, which could underwrite the observance of human rights within and outside the country.

Without doubt Australia's human rights concerns have become intense since 1980s. Successive governments since 1980s have articulated quite forcefully the universal norms in respect of human rights. Also, the government has made efforts to shift the emphasis from basic civil rights to social and economic rights. What is more important is that there also exists bi-partisan support for these aforementioned defining characteristics of Australia's human rights policy. Stressing the importance of international human rights standards, Australia has also helped evolve a multilateral approach. Among others, Australia's role in the UN World Human Rights Conference held in Vienna in 1993 and the Fourth UN World Women's Conference in Beijing in 1995 are notable.

Yet there appear stark differences between policy pronouncements and actual practice especially in the realm of Australia's bilateral initiatives. It is true that Australia has monitored and reviewed the human rights situation in the East Asian countries emphasising moral persuasion rather than resorting to drastic sanctions and outwardly adopting a policy of consistency. However, a closer scrutiny suggests that geo-political and geo-strategic considerations seem to explain largely the Australian human rights concerns in Burma, Cambodia and Indonesia. In the case of China, clearly it is the geo-economics that seem to have influenced Australia's policy overtures. Of the two instances cited, in respect of Tibet, Australia has not only retracted but has also reversed its policy apparently under pressure from China. Regarding Australia's initiatives in respect of the observance of human rights in China, the record is no less noteworthy. Following its sanctions on China following the Tiananmen episode, Australia changed its course in less than two years. As a follow up, Australia adopted the 'active monitoring' process seeking China's accountability to human rights. It hardly proved effective because China welcomed such a move, thereby successfully bilateralised a multilateral process, undermining the ability of the UN Human Rights Commission to monitor China's human rights effectively. Having failed to bring China to terms through its 'active monitoring' policy, Australia adopted since 1997 what it called the 'quiet diplomacy' which set the stage as a turning point in Australia's policy towards China.

No doubt, Australia has benefited as a consequence of the shift in its policy approach towards China—from multilateral to bilateral with the emphasis on civil-political component of human rights. Yet, this skewed policy approach has triggered a domestic human rights crisis with the influx of the so-called 'boat people' from China. This exodus of Sino-Vietnamese people from Beihai in southern China into Australian mainland is largely on account of the inadequate provision of socio-economic rights, a component of the human rights policy, which Australia ignored to monitor in its interest in getting short-term economic gains.

15.10 EXERCISES

- 1) Briefly explain Australia's concerns regarding human rights during the Cold War.
- 2) Examine Australia's responses to international conventions on human rights.
- 3) Assess Australia's initiatives in dealing with human rights violations in China.
- 4) Sketch briefly Australia's policy towards refugees.

15.11 SUGGESTED READINGS

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