JUSTICE EVATT AT THE UN

Like her famous uncle (Herbert Vere 'Doc' Evatt was President of the United Nations General Assembly in 1948) Justice Elizabeth Evatt, President of the Australian Law Reform Commission, has had a long and distinguished involvement in international human rights. She has now been elected to the influential United Nations Human Rights Committee (HRC).

The election took place at a meeting of States Parties to the International Covenant on Civil and Political Rights (ICCPR) in New York on 10 September last year. It is a mark of the high regard in which Justice Evatt is held in the international community that she received the largest number of votes in a field of 19 candidates for the nine vacancies. She is the first Australian to be elected to the 18-member Committee since it was established in 1976.

The HRC is the supervisory body for the International Covenant on Civil and Political Rights and enjoys a reputation as the most influential international human rights treaty body. It meets three times a year to consider reports by the States Parties on the measures they have adopted and progress they have made in observing the rights which the ICCPR has enshrined. The Committee also considers communications from individuals who claim that their rights, as set out in the ICCPR, have been violated and who have exhausted all domestic remedies. More than half of the 112 States Parties have, by acceding to the First Optional Protocol to the ICCPR, accepted the competence of the Committee to consider communications from individuals within their jurisdiction. (See *Reform, Summer 1992 no 63* , p 31 for a detailed account of the Optional Protocol.)

Members of the Committee serve in their personal capacity according to their competency in the field of human rights. Justice Evatt is eminently qualified for membership of the Committee. She was a member of the UN Committee on the Elimination of Discrimination Against Women (CEDAW) from 1984 to 1992 and its chairperson from 1989 to 1990. She has just been appointed a member of the Forum of Reflection which is a committee of people drawn from around the world who meet twice a year to discuss problems confronting the United Nations Educational, Scientific and Cultural Organisation (UNESCO). Other members of the Forum include writers Umberto Eco, Václav Havel, Gabriel Garcia Marquez, as well as scientists, professors and human rights people.

Prime Minister Keating presenting Madame Tallawy, current chairperson of CEDAW, with the second CEDAW report, 25 June 1992.
L to R: Helen L'Orange, Justice Evatt, Mervat Tallawy, Prime Minister Keating, Wendy Fatin, Quentin Bryan, Kaye Loder, Dr Anne Summers.

CEDAW

The Convention for the Elimination Against Women was conceived in 1975 with International Women's Year. The UN adopted the Convention in 1979 and it came into force in 1981. Australia did not ratify it until 1983. It marked a turning point for women in Australia. 'It had quite an important effect for Australia because it resulted in the Sex Discrimination Act

and Affirmative Action legislation at Commonwealth level,' said Justice Evatt. This made sure that we had at least the basic law relating to sex discrimination throughout Australia, whereas up till then we had it in a number of States and not in others.

There are now about 116 countries that have ratified the Convention. This means they are all obliged to report to the CEDAW Committee at four-yearly intervals and to submit a written report and to answer questions about what they are doing to improve the status and equality of women. The process has a way of concentrating the mind, according to Justice Evatt. 'These countries have had to get to grips, in a quite fundamental way, with the issues and to co-ordinate their thinking. When they report to the Committee they want to be able to say they have removed all discriminating aspects in their laws, which is stage one. When they have done that, what the Committee is asking them about is not the removal of legal obstacles but about de facto equality. In other words, we then start asking States: "Where are your data? What's the use of telling us women have equal access to jobs if the percentage of girls in schools is much less that of boys?'"

This reporting requirement is not just a formal obligation, according to Justice Evatt. 'When States know they have to go before the Committee every four years they start to ask themselves "What have we got to show for the last four years? Can we bring any reforms forward in time for the Committee?" Their commitment to the process works as an agent for change.'

First Optional Protocol

When Australia ratified the First Optional Protocol of the ICCPR its commitment was no less momentous. Australia along with about 70 other States has accepted the power of the HRC to receive communications from individuals whose human rights have been violated and to determine whether there has been a violation of rights. In doing that, it has indicated its willingness to accept the umpire's verdict and abide by it, even though the Committee does not have any enforcement power. 'It's quite a big obligation to throw open your activities to the inspection, comment and criticism of an outside agency. It means that individuals in Australia who feel their rights have been violated can, if they qualify, take their case to the Committee in Geneva,' said Justice Evatt. 'It also means that people need to be a lot more aware of what's in the Covenant and how it affects them.'

Racial vilification

All States parties have made reservations to various Articles of the Covenant, Australia included. We have reserved our position, for example, on Article 20 which deals with the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. The ALRC's report on *Multiculturalism and the Law* (ALRC 57) discussed whether the Crimes Act 1914 (Cth) should be amended to create an offence of incitement to racial hatred and in doing so, tackled the issue of our Reservation to Article 20. 'We recommended removing the Reservation,' said Justice Evatt. 'Most Commissioners did not agree because of the free speech issue but some of us felt that we could frame legislation which would serve the purpose without unduly infringing freedom of speech.' A majority of the Commission thus took the view that incitement to racist hatred and hostility should be unlawful.

Since the ALRC report, the Federal Government has tabled the Racial Discrimination Legislation Amendment Bill 1992 which makes racial vilification unlawful and creates a criminal offence of inciting racial hatred. The Government is inviting comment on the proposed law and will accept submissions until February 1993. The proposal does not appear to address religious hatred, which is covered in the ICCPR but the clauses dealing with contempt and ridicule as well as hatred go even further than the ICCPR does. The Attorney-General has indicated that the Government would not be addressing Australia's Reservation to Article 20 of the ICCPR until the Racial Vilification Bill has been passed.

Right to self-determination

As discussed elsewhere in this issue (*The Right to Self-Determination in International Law* by Professor Philip Alston, p 26) the Human Rights Committee has taken the view that it can only deal with the violation of an individual right. It has not, so far, been presented with a case in which it has found that the right to self-determination has been violated in respect of an individual. Various human rights commentators, including Professor Philip Alston, have criticised this as an absurd Catch 22. Justice Evatt takes the long view. 'It's going to be hard for any individual to put up that kind of case (right to self-determination) and that concerns me. It mainly affects the rights of indigenous peoples and minorities who are seeking rights of self-determination. Probably those rights will in the long run be determined at the political level rather than through Committee proceedings because its effect will be felt more in relation to the individual case. That's not to say that one individual case could not affect a lot of people. It could. But it might be difficult for the Committee to handle a case in which an individual is bringing a claim on behalf of a whole indigenous people for the right of self-determination. That might be a hard one to handle. They haven't done it yet.'

Deaths in custody

One form of human rights violation for which the HRC could offer redress is the treatment of prisoners in custody. For example, Part III of the ICCPR includes the right of detained persons to be treated with humanity and respect for the inherent dignity of the human

person. This could have interesting repercussions in the Australian context, according to Justice Evatt. 'It is possible to claim that when authorities know of problems that occur among prisoners in detention and they do no take appropriate preventative action, then those authorities may be treating people with less than humanity or respect. That's possible.'

Part III of the ICCPR also talks about protecting people from arbitrary detention or deprivation of liberty except on such grounds and such procedures as are established by law. This, according to Justice Evatt, could have direct relevance to many community groups in Australia: 'It may be that people are being arrested on a discriminatory basis for certain offences, while others might commit the same offence and go free. You might see this as a violation of equality before the law or a violation of that provision.

'It's a question of looking at the problems that occur out there and then reading the Covenant to see which of these articles could apply to that situation. Then you have to look at certain decisions that the Committee has made on the comments that have been made about the Articles to see whether you can bring your complaint within those provisions.'

Help for individual complainants

A number of specialists with that sort of expertise have formed a network to assist individuals with the often complicated and technical process of seeking redress through the Human Rights Committee. This organisation is the First Optional Protocol Network. It has about forty members throughout Australia who have knowledge and expertise in drafting complaints under the Optional Protocol. The co-ordinator is Professor Hilary Charlesworth, of the Law School at the University of Adelaide. She can refer individuals who wish to lodge complaints to the relevant expert in each State.

There have been two communications from Australia lodged already with the HRC. The first concerns the validity of section 124 of the Tasmanian Criminal Code dealing with homosexuality. Nicholas Toonen from Tasmania has lodged this communication. The Australian Government has not disputed the admissibility of this communication and the HRC has accepted it as admissible. The second is from the victims of the deep sleep therapy at Chelmsford.

Professor Charlesworth views Justice Evatt's appointment to the HRC as an encouraging signal for women's rights and for human rights generally. 'It is particularly significant that this is the first occasion when a member of CEDAW has migrated to the HRC. During her time at CEDAW she gave it a powerful boost. There is a tremendous value in her going from CEDAW to a mainstream human rights body because she is going to bring all her interests to it. The fact that Justice Evatt achieved the highest number of votes was not simply a result of Australian lobbying. She is held in the highest regard in international circles. She is known to be scrupulously honest and independent; incredibly industrious and a good person to have on a committee because she achieves a consensus. People say that when you have Elizabeth Evatt on a committee then that committee will do its job. She is our best export.'

Evelyn McWilliams