

Foreign Policy and Human Rights: Australia as a 'Principled Advocate of Human Rights for All'



Issue

Human rights should be both a goal and an instrument of Australian foreign policy. As a goal, we should commit ourselves to promoting and protecting freedom, dignity, equality and justice for all as a key foreign policy priority. As an instrument, we should promote human rights to secure the underlying conditions for other goals, such as security, development, economic participation and social inclusion.

Despite identifying ourselves as a 'principled advocate of human rights for all',¹ and demonstrating significant commitment to human rights in practice, Australia has not developed a comprehensive, consistent and coherent policy on human rights and foreign affairs. Such a policy could integrate human rights in all areas of Australian foreign affairs and capitalise on the benefits of doing so.

Opportunity and Imperative for Action

The importance and imperatives of a human rights-focused foreign policy were recently outlined by our close ally, the United States, in a speech by Secretary of State Hillary Clinton, entitled 'A Human Rights Agenda for the 21st Century'.² The Secretary of State outlined the Obama Administration's view that the means and ends of US foreign policy are best served by a commitment to:

- universal human rights standards and accountability and an approach to human rights that is principled and agile;
- multilateralism, working with and through the UN; and
- empowering communities, including through financial and technical support to NGOs.

Similarly, Australia's national interest would be positively served by more explicitly, deeply and consistently integrating human rights in foreign policy.

The benefits of a strengthened commitment to human rights as a central goal and instrument of Australian foreign policy could include:

- the development of more stable and predictable international and regional policy environments;
- enhanced international credibility and diplomatic capital;
- strengthened domestic and international policy coherence and effectiveness; and
- the mobilisation of a positive, unifying national identity and values.³

In addition to having the imperative to position ourselves as a principled human rights advocate, Australia also has the characteristics to be an effective human rights promoter state, including that:

- we are a democratic and politically stable middle power;
- we are globalised and multicultural;
- we have an active and well networked civil society; and
- we enjoy low levels of social stratification and high levels of economic development.

Geopolitically, Australia is very well placed to broker deals and bridge divides between the global North and the global South, and between East and West, on human rights issues.⁴ Australia has played just such a role in the past on crucial human rights issues, including in relation to the negotiation of the

Universal Declaration of Human Rights and the development of effective sanctions against apartheid South Africa.

The timing for a commitment to a human rights-based approach to foreign policy is opportune. In 2011, Australia will go through the UN Human Rights Council's Universal Periodic Review process. A commitment to the development of a comprehensive human rights-focused foreign policy could be a significant 'voluntary pledge' made in advance of this process.

Additionally, Australia is running for the Security Council in 2013-14 and has positioned itself as a 'principled advocate of human rights for all'. The adoption of a comprehensive human rights-based foreign policy would give additional substance and credibility to this commitment.

Recommendations for Action

Australia's approach to human rights and foreign policy should be progressive, principled and persistent. Drawing on the elements outlined by Secretary of State Clinton, concrete actions to operationalise this approach include:

A Principled Approach to Universal Human Rights and Accountability

1. Australia should develop a comprehensive white paper on human rights and foreign policy.⁵ The paper should: explain the benefits and imperatives of a human rights-based approach to foreign policy; set out Australia's human rights and foreign policy objectives; and detail the means by which the Government will pursue these strategic objectives. The paper should identify priorities for action and make concrete, measurable commitments across all areas of Australian foreign policy which impact on human rights.⁶
2. Australia should develop and undertake Human Rights Impact Assessments as a key aspect of doing business abroad, including particularly in the areas of aid, development, trade, investment, business, migration, defence, military cooperation, security and the environment. Where appropriate, Australia should negotiate for bilateral and multilateral agreements to include human rights clauses and safeguards.⁷
3. The Australian Government should establish the post of Australian Human Rights Ambassador to promote human rights across all areas of foreign policy and ensure a coordinated and coherent approach to human rights at the international level.⁸
4. Australia is a party to the significant majority of core international human rights treaties and protocols. Consistent with our commitment to the universality and interdependence of all human rights, together with accountability for breaches of human rights, Australia should expedite ratification of, or accession to:
 - the *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*;
 - the *Optional Protocol to the Convention against Torture*; and
 - the *International Convention on the Protection of the Rights of All Migrant Workers and their Families*.
5. Australia's capacity and ability to promote human rights abroad is inextricably linked with our domestic human rights situation. The strengthening of domestic human rights protections would complement and add coherence to Australia's foreign human rights policy. As the US Secretary of State recognised, 'by holding ourselves accountable, we reinforce our moral authority to demand

that all governments adhere to obligations under international law.' Having regard to key issues of domestic concern and international scrutiny for Australia, priority actions should include:

- the enactment of a comprehensive national Human Rights Act;⁹ and
- domestic implementation of the *UN Declaration on the Rights of Indigenous Peoples* and the acceptance of recent recommendations of the UN Special Rapporteur on the Rights of Indigenous Peoples.¹⁰

Multilateralism and Engagement with the UN

6. Australia should commit its 2013-2014 Security Council candidacy to the global promotion, protection and realisation of human rights and the more intensive engagement of the Security Council in this endeavour.¹¹ Commitments in this regard could include:
 - promoting the links between the realisation of human rights and international peace and security, thereby better focusing the attention of the Council on human rights issues;¹²
 - further engaging human rights experts (including Special Procedures and the UN High Commissioner for Human Rights) in the work and deliberations of the Council;
 - requesting the integration of human rights analyses in reports tabled with the Council;
 - pursuing implementation of Security Council resolutions which deal with human rights; and
 - promoting the establishment of a Security Council Human Rights Committee as a subsidiary body tasked to build the capacity of UN Member States to protect human rights both domestically and extra-territorially.¹³

We should use our Security Council candidacy to promote our national interest in international human rights, the rule of law and good governance.

7. Australia should similarly take a proactive and principled approach to the Human Rights Council, whether as an active observer state or member. We have an important role in ensuring the Council fulfils its mandate, and achieves its potential, as the leading multilateral forum for the discussion, promotion and enforcement of human rights. In particular, Australia should:
 - commit to competitive, genuinely contested and principled elections for the Human Rights Council in accordance with General Assembly Resolution 60/251;
 - play a leadership role in the review of the Council in 2011, advocating a strengthening of its mandate and modalities, including the Special Procedures, the Universal Periodic Review and follow-up mechanisms; and
 - adopt international best practice in our approach to the Universal Periodic Review, including in respect of consultation and preparation of the country report, providing support for engagement by NGOs, and developing concrete, progressive voluntary pledges and commitments.
8. Australia should seek to strengthen and secure the independence of the UN High Commissioner for Human Rights, including by increasing its voluntary contribution to the Office of the High Commissioner for Human Rights.
9. Australia should more actively engage in the nomination and selection of treaty body members and Special Procedures. Australia should emphasise competence, independence and qualifications as the primary criterion for election or appointment.¹⁴ As the UN High Commissioner for Human Rights

has recently stated, 'expertise on the substantive issues of the mandate should be the primary consideration in the appointment of [human rights] experts.'¹⁵

10. Australia should establish better institutional mechanisms to monitor and promote compliance with our international human rights obligations and the recommendations of UN human rights bodies.¹⁶

In particular, parliament should establish a Joint Parliamentary Human Rights Committee to:

- scrutinise all Bills and subordinate legislation for compatibility with human rights;
- conduct thematic inquiries into human rights issues; and
- monitor and report on the implementation of the Concluding Observations and Views of UN treaty bodies and the recommendations of both the Special Procedures and the Universal Periodic Review of the UN Human Rights Council.

Empowering Communities and Supporting NGOs

11. Australia's Human Rights Grants Scheme provides much needed funding to 'build the capacity of civil society and NGOs in developing countries to protect and promote human rights at the grassroots level'. The recent expansion of this fund is very welcome. Under the Scheme, funding is provided on a short-term project basis only for existing organisations that are based in developing countries. While this support is invaluable, the Government should expand or supplement the Grants Scheme to provide longer-term funding for national, regional and international NGOs that are working on human rights issues relevant to developing countries.¹⁷

12. Australia should also build the capacity of Australian NGOs to work and advocate on extra-territorial and foreign policy human rights issues. In particular, the Government should amend the *Income Tax Assessment Act* to include 'the promotion and protection of human rights' as a charitable purpose. This would significantly increase the capacity of NGOs in Australia to raise funds and undertake a range of activities to promote human rights abroad. Additionally, the Government should establish a Human Rights Grants Scheme for domestic NGOs similar to that available for foreign organisations through the AusAID Human Rights Grants Scheme.

13. Governments and NGOs have critical and complementary roles to play in the promotion and protection of human rights. These roles are most effective when governments and NGOs enjoy a respectful relationship, engage in robust dialogue, and work cooperatively. Recognising this, the Government should convene an Annual 'Whole of Government' Human Rights Consultation between government and human rights NGOs. This consultation could be led by the Department of Prime Minister and Cabinet, together with the Department of Foreign Affairs and Trade and the Attorney-General's Department, and would facilitate an integrated, coordinated, 'whole of government' approach to human rights issues. Complementing the Government consultation, the Government should also sponsor an annual summit for NGOs to network, strategise and discuss current human rights challenges and opportunities.

14. Recognising the need to build human rights capacity in the Pacific, the Australian Government should convene a workshop which brings together key human rights and civil society organisations and actors from across the Pacific region. Such a workshop could provide a forum to facilitate dialogue, networking, capacity building and collaboration between NGOs across the region, and to work constructively with governments to promote human rights standards and institutions.

About the Human Rights Law Resource Centre

The Human Rights Law Resource Centre is a leading national community legal centre. The Centre promotes and protects human rights and contributes to the alleviation of poverty and disadvantage in Australia.

¹ Department of Foreign Affairs and Trade, *Australia: United Nations Security Council Candidate 2013-14*.

² US Secretary of State, 'A Human Rights Agenda for the 21st Century', Speech at Georgetown University, Washington DC, 14 December 2009.

³ See generally, Alison Brysk, *Global Good Samaritans: Human Rights as Foreign Policy* (2009); David P Forsythe, *Human Rights and Comparative Foreign Policy* (2000).

⁴ For a discussion of the crucial role played by Australia in the negotiation of the *UDHR*, advocating successfully for the inclusion and interdependence of civil and political rights and economic, social and cultural rights: see Ashley Hogan, *Moving in the Open Daylight: Doc Evatt, an Australian at the United Nations* (2008) 39-43.

⁵ According to Baehr and Castermans-Holleman (*The Role of Human Rights in Foreign Policy* (3rd ed, 2004)), 'much of the real and remediable inconsistency in international human rights policies arises from inattention and lack of coordination'. They argue that 'inconsistency reduces the efficacy of even well-meaning and otherwise well-planned initiatives' and call for much greater 'coordination', 'strategic vision' and 'bureaucratic organisation' in the area of foreign policy and human rights.

⁶ In 2007, the Netherlands released a comprehensive strategy on human rights and foreign policy: see Ministry of Foreign Affairs, *Human Dignity for All: A Human Rights Strategy for Foreign Policy* (2007). The policy 'places human rights at the centre of Dutch foreign policy and explains how the Netherlands intends to implement it'. The policy details over 100 actions the Netherlands will take to advance human rights across six priority areas.

⁷ In a March 2010 report on a proposed extradition treaty between Australia and India, the Joint Standing Committee on Treaties called for the inclusion of explicit human rights safeguards in Australia's extradition arrangements with other countries.

⁸ Over the last 20 years, a number of states have established the post of Human Rights Ambassador, including the Netherlands, Norway, Sweden, France and Spain. The posts seek to promote and integrate human rights across all areas of foreign policy. They also often play a role in engaging with domestic and international civil society. In Canada, the Standing Senate Committee on Human Rights has recently recommended that the Government appoint an 'ambassador for human rights to work in coordination with relevant federal departments', to 'be Canada's permanent representative to the Human Rights Council' and to 'coordinate Canada's negotiations on human rights issues in a consistent manner across all international forums.'

⁹ See Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, *The Situation of Indigenous Peoples in Australia*, UN Doc A/HRC/15 (4 March 2010). The issue of Indigenous disadvantage in Australia has been the subject of consistent commentary and recommendations by UN human rights bodies and experts over the last 20 years.

¹⁰ The enactment of a Human Rights Act would be consistent with strong and consistent recommendations made to Australia by UN human rights treaty bodies and independent experts, including the Human Rights Committee (2009), the Committee on Economic, Social and Cultural Rights (2009), the Special Rapporteur on Human Rights and Counter-Terrorism (2006), and the Special Rapporteur on Adequate Housing (2008): see generally, National Human Rights Consultation Committee, *Report of the National Human Rights Consultation* (2009) 277.

¹¹ Consistent with this recommendation, Sweden committed its terms as President of the European Council of Ministers in 2009 to the 'prioritization and promotion of human rights'.

¹² Under the *UN Charter*, the Security Council is tasked with the 'maintenance of international peace and security': art 24. In *In Larger Freedom* (2005), the UN Secretary-General called for greater recognition of the inter-relationship of human rights and international peace and security and the integration of respect for human rights in all UN institutions, including the Security Council.

¹³ This Committee could work similarly to the Security Council's Counter-Terrorism Committee ('CTC'). Pursuant to Security Council Resolutions 1373 (2001) and 1624 (2005), the CTC works 'to bolster the ability of UN Member States to prevent terrorist acts both within their borders and across regions'. The CTC is supported by the CTC Executive Directorate, which 'carries out the policy decisions of the Committee, conducts expert assessments of each Member State and facilitates counter-terrorism technical assistance to countries.'

¹⁴ As recommended by Canada's Senate Standing Committee on Human Rights, *Canada and the United Nations Human Rights Council: Time for Serious Re-Evaluation* (2008).

¹⁵ *Report of the UN High Commissioner for Human Rights to the 13th Session of the UN Human Rights Council*, UN Doc A/HRC/13/26 (2009), [12].

¹⁶ In this regard, see Human Rights Committee, *Concluding Observations of the Human Rights Committee: Australia*, UN Doc CCPR/C/AUS/CO/5 (2009), [8], [10].

¹⁷ In the Netherlands, for example, the Human Rights Fund of the Foreign Ministry provided €25 million to a diverse range of national, regional and international human rights NGOs in 2009. This will rise to €27.5 million in 2010.