

The Inaugural Sir Kenneth Bailey Memorial Lecture

[The Sir Kenneth Bailey Memorial Lecture series will focus on Australia in the International Legal Order. The inaugural lecture was presented by Senator Gareth Evans, Australian Minister for Foreign Affairs, at the University of Melbourne on 29 April 1995. In introducing the lecture, Senator Evans described the work of Sir Kenneth Bailey in international relations.]

Kenneth Hamilton Bailey, fourth Dean of the Faculty of Law of the University of Melbourne, scholar, public servant, diplomat, and major contributor to the drafting of the United Nations Charter, was a patient, courteous, quiet and high-principled man. Born in Melbourne in 1898, Bailey progressed with great distinction through Wesley College, Melbourne University (interrupting his studies in Arts and Law to serve as a gunner in France in the last year of the Great War) and then Oxford as a Rhodes Scholar. He returned to Melbourne in 1924, married in 1925, was appointed Professor of Jurisprudence in 1927 and became Dean of the Faculty of Law the next year, in succession to Sir William Harrison Moore. He subsequently moved to the new Chair of Public Law in 1930, matching his principal academic fields of International Law and Constitutional Law. A self-confessed old-fashioned legalist, he was regarded as a stimulating and respected teacher, at his best with his most gifted students upon whom he concentrated his attention. He was a prodigious worker, keeping long hours and needing little sleep, traits which were to stand him in good stead in his public service of later years.

Bailey had had a keen interest in international affairs since his student days. He was active in the Australian Institute of International Affairs, where he first met Paul Hasluck, who was to become a close associate and life-long friend. In 1937 he was an Australian adviser at the Imperial Conference in London and a delegate at the League of Nations Assembly at Geneva. In January 1943 Bailey was seconded by the University to the Commonwealth Attorney-General's Department for the duration of the Second World War. It was this appointment which led to his involvement in the creation of the United Nations Organisation.

In 1944 the Commonwealth Government assigned to Bailey and Hasluck, the latter then in External Affairs, the task of studying and briefing Australian Ministers on the Dumbarton Oaks proposals, effectively the first draft of the UN Charter, prepared by the victorious war powers. That the Australian delegation made such a distinctive and significant contribution to the formation of the UN Charter was due in very large part to this effort.

Bailey accompanied the Australian delegation to San Francisco in April 1945, where, under the demanding *de facto* direction of Dr Herbert Vere Evatt, all his qualities of legal knowledge, draftsmanship, tact, equanimity and, not least, sheer physical endurance, were tested to the full. He was a member of the Coordinating Committee, which had the task of settling the final draft of the

UN Charter, and his service to the UN cause at San Francisco was described at the time as magnificent

Bailey's most visible, single contribution was probably made as the Australian representative to the group dealing with the International Court of Justice. This was the context, in fact, in which Sir Kenneth Bailey recorded what I would regard as *the* crowning achievement of his whole career: he secured a confession from Evatt that he, Bailey, knew more about a subject than Evatt did! For that alone, Sir Kenneth Bailey deserved to have this lecture named for him, and I am honoured to have been asked to inaugurate this lecture series.

FUTURE DIRECTIONS FOR THE UNITED NATIONS

GARETH EVANS*

[This paper was presented as the Inaugural Sir Kenneth Bailey Memorial Lecture at the University of Melbourne, 29 April 1995. With an emphasis on peace, development and human rights, the paper discusses the objectives of the United Nations at its inception and now, the primary obstacles to the achievement of those objectives, and practical ways in which the United Nations Organisation could be reformed in order to better meet its objectives. These reforms focus on administration, management and funding.]

The opening statement made by the Australian delegation to the UN Conference on International Organisation in 1945 captures the essence of Australia's vision for the new world body at that time:

In our view the success of the Conference will be measured by one test. Will it bring into existence an organisation which will give the peoples of the world a reasonable assurance of security from war and reasonable prospect of international action to secure social justice and economic advancement?¹

Australia's primary goal for the UN in 1945 was the creation of a system in which disputes could be settled peacefully, in accordance with accepted international legal principles. To this end, Australia favoured the establishment of a permanent court for the peaceful settlement of disputes and, through the Security Council, a mechanism for the nations of the world to respond collectively to acts of aggression. While Australia accepted the role of the then great powers as final arbiters on issues which threatened international peace and security, it also fought passionately for the rights of smaller states by advocating a strong discussionary and recommendatory role for the General Assembly on all matters within the ambit of the UN Charter, and for a Charter which guaranteed the territorial integrity and political independence of all member states.

Australia also sponsored a number of initiatives which recognised that economic and social issues were as central to international harmony as military issues.² They included a full employment pledge by all member states, and a series of measures aimed at ensuring that the principal purpose of administering dependent territories was the welfare and development of the peoples of those territories. Consistently with these initiatives, Australia took the position that one of the UN's enshrined objectives should be not only the recognition but also the observance of fundamental human rights.

* Australian Minister for Foreign Affairs.

¹ CPP General Session 1945-6, Vol III, 75-9.

² Herbert V Evatt, Speech to BBC Radio, cited in *California News* (San Francisco), 3 April 1945.

Half a century later, in my own address to last year's 49th UN General Assembly, I set out the Australian Government's view of what we wanted from the UN in its next 50 years. I said this:

Australia wants the United Nations over the next 50 years to be an active and effective agent for the peaceful settlement of disputes. We want it to be a catalyst for international peacebuilding, working to strengthen international law, control and reverse arms races, promote confidence and dialogue between states and address underlying causes of instability, including internal conflict. We want it to promote, in more effective coordination with the major international economic and financial institutions, equitable and sustainable development and to coordinate responses to humanitarian crises. We want it to emerge even more strongly as a promoter of universal standards of human rights and their respect by governments. We want the UN to pursue its objectives of peace, development and human rights in an integrated, coordinated way, with these objectives complementing rather than being in competition with each other. And we want it to be an organisation assured of the wholehearted backing of its member states, and provided by them with all the financial resources it requires to meet its obligations. We want, in short, the UN to become the organisation which was envisaged in its Charter.³

The degree of coincidence between this and our stated goals in 1945 is really quite striking. In thinking about future directions for the UN, we really don't need, so far as basic concepts and principles are concerned, to look much further than where we started. The challenge, as I see it, is essentially to reintegrate the functions of the UN in the way I believe the founders intended: to avoid the compartmentalisation of functions — in which peace and security issues, development issues, and human rights and justice issues were treated as being in completely different conceptual and institutional boxes — which developed and were maintained throughout the Cold War years.

That compartmentalisation is simply not an adequate basis for the UN to deal with the real world distress that so many people are now suffering. Basic economic needs, let alone the needs of individuals and groups for dignity and liberty, cannot be met in environments where nobody's personal security can be guaranteed. The international community can no longer turn away from being involved in protecting human security in many of those situations which, during the Cold War years, would have been reflexively regarded as wholly internal in character and thus beyond the UN's sphere of interest.

We have to try to recapture some of the original vision built into the stated aims of the UN Charter. In the Preamble to the UN Charter, and in its purposes and principles, the three basic objectives of peace (meeting the need for security), development (meeting economic needs) and human rights and justice (meeting the needs for individual and group dignity and liberty) are clearly set out.⁴ In the wake of the Great Depression and the Second World War, the authors of the UN Charter conceived these objectives as interrelated. The 'Four

³ Gareth Evans, 'Reintegrating the United Nations: Statement to the Forty-ninth Session of the General Assembly, United Nations' (New York), 30 October 1994.

⁴ UN Charter Preamble.

Freedoms', freedom from fear, freedom of belief, freedom of speech and freedom from want, were to be a guarantee that further generations would not face the oppression, suffering and destitution that many endured in the 1930s and '40s.

The trouble has been that in the UN during the Cold War years, the integral relationship of its different activities was not reflected in the organisation's structure or work methods. The distinction between 'peace and security' on the one hand and 'development' on the other, has too often been a matter for sterile and unhelpful debate, with attempts to trade off one for the other as priorities for the UN. Any viable modern concept of international peace, let alone peace within states, must recognise that the two are indissolubly bound up with each other: there can be no sustainable peace without development, and no development without peace. Human rights, in the fullest sense, not just economic and social rights but civil and political rights as well, have to come into the equation too: there is not likely to be lasting or sustainable peace in any society if material needs are satisfied, but needs for dignity and liberty are not.

The vision I have for the future, then, is of a UN in which all the objectives of peace, development and human rights, march comfortably together in step. It should be recognised that the UN is as much concerned with *human* security as state security. Indeed the logic of its Charter's preoccupation with economic, social and cultural development and human rights demands that it be so concerned. While there might well, and properly, continue to be a presumption against intervention in matters 'essentially within the domestic jurisdiction of any state',⁵ there is no presumption against *concern* with such matters, and no absolute bar to going further than mere concern if the Security Council can be persuaded that the circumstances justify actual intervention.⁶ And my vision is of a UN that actually works, in terms of its structures and management, in a way that makes possible the achievement of these objectives.

I TASKS

But what does all this mean in terms of specifics? Let me sketch out some of the priority tasks I see for the UN in the years ahead in each of its three broad functional areas, before indicating what I believe should be the main priorities in the areas of structure and process.

A *The Peace Agenda*

I believe that the central sustaining idea for international efforts, both in the UN and outside it, to maintain peace and stability should be *cooperative security*.⁷ This embraces three separate ideas; 'collective security', 'common

⁵ UN Charter art 2(7).

⁶ Gareth Evans, 'Cooperative Security and Intra-State Conflict' (1994) 96 *Foreign Policy* 3, 9.

⁷ Gareth Evans, *Cooperating For Peace: The Global Agenda for the 1990s and Beyond* (1993) 15-6.

security' and 'comprehensive security', all of which have been current in thinking about international security cooperation for some time. The first of these, 'collective security', has a long tradition in the UN and other collectives of states. It involves the notion of member states agreeing to renounce the use of force among themselves and collectively coming to the aid of any member attacked by an outside State or a renegade member. The idea of 'common security' was first clearly articulated in the 1980s and has become ever more prominent with the end of the Cold War. Essentially it is the notion of states finding security by working *with* others, rather than against them. 'Comprehensive security' is simply the notion that security is multidimensional in character, encompassing a range of political, economic, social and other non-military considerations, as well as military capability.

'Cooperative security' is a useful term not only because it brings these three familiar approaches together, but because it does so in a way which not only emphasises prevention, but at the same time encompasses the whole range of responses to security concerns, both before and after the threshold of armed conflict has been crossed. At one extreme this would involve long-term programs to improve economic and social conditions which are likely to give rise to future tensions. At the other, it includes the enforcement of peace by full-scale military means.

This is not the occasion to spell out in elaborate detail what I think should be involved in that whole spectrum of responses, ranging from the peacebuilding, preventive diplomacy and preventive deployment strategies that are needed to build and maintain peace, through the peacemaking and peacekeeping strategies that are needed to restore it, to the sanctions and military peace enforcement strategies that may be necessary to enforce it. I have done all that elsewhere.⁸ But let me spend a little time on some matters which either are, or should be, receiving particular attention at the present time, as we wrestle with the unhappy reality of a world which is not nearly as peaceful as we hoped it would be after the end of the Cold War, and one in which nearly all the conflicts that are occurring are *within* states rather than between them, and are fuelled not so much by traditional political or ideological rivalry as by ethno-nationalism and religion.

My first and major theme here is that we do have to devote more resources to prevention. In a world where commitment and resources are always likely to fall short of aspirations, it makes far more sense to concentrate efforts on peacebuilding and other preventive strategies, than on after-the-event peace restoration. That holds as much for intra-state as for interstate conflicts. Violent conflicts are always far more difficult and costly to manage and resolve than non-violent disputes, and failed states are extremely difficult to put back together. The political problem with prevention, however, is that if it works nobody notices. It's an iron law of national and international government that

⁸ Gareth Evans, 'Ensuring Peace: The Future of the United Nations, Address to the Australian College of Defence and Strategic Studies' (Canberra), 16 March 1995.

everyone likes to be *seen* to be doing something. The notion that something might be inherently worth doing, or worth doing as an insurance premium to avoid a larger payout later, tends to be foreign to the political psyche. We are just going to have to put more effort into getting more people to see the point of that splendid observation attributed to Jean-Marie Lehn, who won the Nobel Prize for Chemistry in 1987: 'Only those who can see the invisible can do the impossible'.

Peacebuilding is the most important preventive strategy because it goes to the fundamental underlying causes of disputes and conflicts, to ensure that they do not occur in the first place, or if they do arise, they will not recur. I have always thought it a waste of a good phrase to confine the idea of peacebuilding to situations of post-conflict reconstruction, as the Secretary-General has been inclined to do. Potentially, the idea has a much wider reach. This is intuitively easy to understand and, in fact, is central to my earlier reintegration theme.

At the interstate (or international) level, peacebuilding strategies centre on building or strengthening a range of international structures or regimes aimed at minimising threats to security, building confidence and trust, and operating as forums for dialogue and cooperation. Multilateral arms control and disarmament regimes; treaties governing issues like the Law of the Sea, forums like the International Court of Justice and other international bodies for resolving disputes, and multilateral dialogue and cooperation forums, are all examples of these structures. The Association of Southeast Asian Nations (ASEAN) Regional Forum is a prime example of structure building in our own region. Peacebuilding within states, by contrast, seeks to encourage equitable economic development in order to enhance human rights, broadly defined, and to facilitate good governance. These are goals we should pursue for their own sakes, but also because advancing them contributes directly to national and international security. Policies which enhance economic development and distributive justice, encourage the rule of law, protect fundamental human rights and foster the growth of democratic institutions, are also *security* policies. They should be recognised as such, and receive a share of current security budgets and future peace dividends.

Preventive strategies must also address actual disputes which may, if not resolved, deteriorate into armed conflict. Hence, peacebuilding must be accompanied by strategies of peace maintenance, the major strand of which is preventive diplomacy. One perhaps normally thinks of this as something done to resolve or contain disputes occurring between states. But it has equal application to many situations of internal ethno-nationalist and religious squabbling. The Organisation on Security and Cooperation in Europe (OSCE) has already shown, both through its own direct missions, and through the role of the High Commissioner on National Minorities, how this might work in countries like Albania, Estonia, Latvia, the Former Yugoslav Republic of Macedonia, Hungary and Slovakia. Creative political solutions, involving power-sharing strategies

and the like, can be found and adapted to many problems involving disaffected national minorities.

If the UN is to play its rightful role as the pre-eminent cooperative security institution in the post-Cold War era, it must upgrade its capacity to the point where it can offer an effective dispute resolution service to its members, providing low-profile, skilled third-party assistance through good offices, mediation and the like. I have elsewhere made specific proposals for strengthening the UN in this field including that regionally-focused UN preventive diplomacy units be established.⁹ Because preventive diplomacy is so cost-effective, a large increase in the UN's capability could be achieved at minimal cost. The creation of, for example, six regional preventive diplomacy centres, with a total staff of one hundred and the necessary support funding, would cost little more than US\$20 million a year. By comparison, the UN's peacekeeping budget for 1994 was US\$3.7 billion and the cost of its operation in Mozambique was over A\$1 million each day.¹⁰ And by way of even more graphic comparison, the UN Coalition's combat budget for the Gulf War against Iraq was US\$70 billion.¹¹

Regional mechanisms for conflict prevention have begun to emerge in Europe, Africa and the Middle East. For example, the Association of Southern African States (ASAS) has recently been formed as a part of the Southern African Development Community (SADC) with a strong conflict prevention objective. As part of the Middle East Peace Process, the proposed Regional Security Centre in Jordan and two related centres in Qatar and Tunis, to be established through the Arms Control and Regional Security (ACRS) working group, should also contribute to enhancing preventive diplomacy. There is, as well, discussion in the ASEAN Regional Forum context of a possible centre in East Asia. Australia has proposed that the UN Secretary-General should report to the United Nations General Assembly 50th Session on what could be done to support the development of regional centres.

While prevention is always better than cure, it remains important that there be some credible international capacity to deal collectively, and if necessary forcefully, with deadly conflicts, including certain humanitarian crises, that cannot be prevented or resolved by other means. This raises the very large question of the proper scope and limits of UN military intervention, whether by way of Chapter VI peacekeeping or Chapter VII peace enforcement operations, or some combination of the two.

While political constraints on decision-making by the Security Council have lessened significantly with the passing of the Cold War and the virtual disappearance of the veto, the experience of more UN peace operations, and of more ambitious operations, has exposed important constraints on the effectiveness of

⁹ Evans, *Cooperating For Peace*, above n 7, 75-8.

¹⁰ Gareth Evans and Bruce Grant, *Australia's Foreign Relations in the World of the 1990's* (1995).

¹¹ *United Nations Peace-Keeping — Information Notes*, December 1994; *International Defense Review — Defense 95*, Jane's Defence Magazines (1995).

military responses under the UN flag. In the last few years, we have tested the limits of how far the UN's secretariat resources can stretch, and of how much member states are willing to contribute, in troops and finance. We have discovered that, even with generous arrangements for seconding military staff into UN headquarters (and I should note here that the Australian Defence Force has seven staff seconded into the Department of Peace Keeping), there are serious limits to the capacity of the UN Secretariat to act as a strategic headquarters handling, as is now the case, 17 operations around the world. Our Ministers for Defence have begun to place greater focus on the limited headquarters capacity for planning and administration.

We have learnt that, at least for the moment, there seems to be a ceiling of around 70-80,000 troops which member states will collectively make available to the Secretary-General at any one time, and that there is often a considerable lag before these forces can be deployed to the field. The budget for peace operations has risen ten-fold in three years, and we are now seeing that the largest contributor has decided unilaterally to cut its share of that budget, and that many developing countries fear that the expansion in payments for such operations will be at the expense of funding for their priority concern of economic and social development.

We have also observed the limitations on Security Council mandates for many operations. The last few years have given us all too many examples, especially in the former Yugoslavia, of politically-influenced mandates which have not been achievable in the field or which have lacked the clarity about goals and time frames which commanders could reasonably expect. Similarly, we have seen missions undertaken without provision for the necessary resources, and the UN assuming a role in complex situations without sufficient thought given to how blue-helmeted forces should interact with other international actors, whether these be non-governmental aid bodies, major UN organs or agencies such as the Office of the United Nations High Commissioner for Refugees (UNHCR). We have seen the problems caused when peacekeeping operations, which are premised upon the consent of the parties to the UN's presence and should be inherently peaceful, are mixed with peace-enforcement missions which presume resistance by one or more of the parties and are mandated to apply whatever force is needed to meet the operation's objectives.

The Secretary-General's *Supplement to An Agenda for Peace*, published in January 1995, indicates that at least some of these lessons have been well taken. He concludes that 'nothing is more dangerous for a peacekeeping operation than to require it to use force when its existing composition, armament, logistic support and deployment deny it the capacity to. It is therefore important to avoid mandating enforcement tasks to a peacekeeping mission.'¹² I share that view, and also agree with his conclusion that enforcement action is beyond the current capacity of the UN to conduct itself (as distinct from authorise), except

¹² UN Doc A/50/60, S/1995/1 (1995).

on a limited scale. For the immediate future, it is likely that many Chapter VII operations will be delegated to 'regional arrangements or agencies', as Article 53 of the UN Charter contemplates, including to international coalitions. This is clearly the sensible option when the level of force required amounts to outright war, as in the Gulf War. The practical reality of limited capacity means it will also make sense in a range of other situations, such as Operation Turquoise in Rwanda and CIS operations in Georgia and Tajikistan.

One of the evident weaknesses of UN peace operations, under Chapter VI or Chapter VII, has been the inability to deploy forces quickly when a crisis is emerging. There has been a flurry of recent proposals and studies to consider how the UN could do better in deploying forces to crises more rapidly. Several Foreign Ministers, including me, have commented that the UN's tardiness in mounting an effective operation in Rwanda in time to halt the genocidal killings there 12 months ago has confronted us squarely with the need to reconsider the options, including the idea of a standing volunteer force. The proposals range from Dutch Foreign Minister Mierlo's idea of a 'UN fire brigade', a variation on a theme long-advanced by Sir Brian Urquhart, to suggestions for enhanced stand-by arrangements put forward by the Secretary-General and the Danish Government. Canada is conducting an intensive study on how the UN's rapid deployment capacity could be improved which will cover early warning, integrated planning, logistics, command and control systems, doctrine and interoperability.

After devoting many hours of discussion to the subject around Europe and in New York and Washington in recent weeks, my own instinct on all this is that it would make most sense in the immediate future for us all to concentrate our efforts on building the UN's headquarters capacity to enable it to better conceptualise operations, construct their mandates, plan and organise them, and rapidly set them in train on the ground. More professional oversight and support is necessary at both the strategic and operational level. Although a great deal has been done to improve that capacity in recent times, there are still major inadequacies, both quantitative and qualitative. I believe that if member states had more confidence in the role and competence of the headquarters' military general staff, then the 'stand-by' option would be likely to be much more effectively utilised in practice, and there would be less need to pursue what increasingly seems like the will-o'-the-wisp of a standing volunteer force.

B *The Development Agenda*

A major debate is presently taking place about the UN's role in economic and social development, stimulated by the Secretary-General's *An Agenda for Development*,¹³ a less substantial document than his *An Agenda for Peace*,¹⁴ but nonetheless a basis for addressing key issues. One such key question is what

¹³ UN Doc A/48/935 (1994).

¹⁴ UN Doc A/47/277, S/24111 (1992).

can be done to improve the multilateral system's ability to develop and implement development programs in a more coordinated and coherent manner, including finding ways to allow the Bretton Woods institutions and UN bodies to work in closer harmony. From aid recipients' points of view, an equally essential element is some greater guarantee of continuing commitment by donor countries to aid in technology transfers to the developing world, a concern made more acute as they observe declining real levels of assistance.

Under the terms of the UN Charter, the Economic and Social Council (ECOSOC) was to share with the General Assembly the responsibility for the UN's promotion of international economic and social cooperation.¹⁵ Largely due to Dr Evatt's persistence, member states undertook to take 'joint and separate action in cooperation with the organisation'¹⁶ for the achievement of goals specified in the UN Charter such as 'higher standards of living, full employment and conditions of economic and social progress and development'.¹⁷ Indeed this undertaking, in Article 56, became known in San Francisco as 'the Australian pledge'. ECOSOC was given powers to prepare reports, make recommendations to the General Assembly, prepare draft conventions, call international conferences and to coordinate the activities of the UN specialised agencies. The last of these functions fell into disuse for much of the UN's history, being reduced to formalistic reporting by agency heads to the Council and peremptory participation in its work. As more attention has been paid to the lack of coherence and coordination between the efforts of different parts of the UN developmental system, there has been increasing interest in reviving ECOSOC's intended role.

Some revitalisation steps have already been taken. The Council's working methods have been streamlined. Unnecessary duplication of debate and consideration of issues considered fully in the Council's subsidiary bodies have been limited or eliminated. A greater focus on developing agreed, system-wide approaches to problems is being encouraged, in part through holding an annual high-level debate on specific topics which cut across the jealously-guarded fiefdoms of the development programs and the specialised agencies. The contribution made to this process of reform by Australia's current Permanent Representative, Richard Butler, and his predecessor the late Dr Peter Wilenski, is little known in Australia but warmly acknowledged elsewhere.

Hopefully, these changes are the beginning of a more far-reaching process. They have already produced some worthwhile results. In 1994 ECOSOC led the way in developing a UN Joint and Co-sponsored Program on HIV/AIDS, drawing together six coordinating agencies and the member states for the first time.¹⁸ The tests for a reformed ECOSOC will be its influence on the overall

¹⁵ UN Charter Ch X arts 61-72, provide for the composition, functions and powers, voting and procedure of the Economic and Social Council; UN Charter Ch IX, arts 55-6 and 60, provide for economic and social cooperation amongst member states.

¹⁶ UN Charter art 56.

¹⁷ UN Charter art 55.

¹⁸ ESC Res 24, 44 UNESCOR, UN Doc E/24 (1994).

effectiveness of multilateral development programs and the willingness of donors to support them, and the extent to which it is able to engage the international financial institutions, the major agencies and UN funds and programs in a collaborative relationship.

There is no lack of issues for the agenda of a revitalised ECOSOC: the alleviation of extreme poverty, stabilisation of population growth, the situation of women and children and the economic problems of Africa would only begin the list. That these are issues of great concern to the majority of governments was apparent at the Global Conference on Population and Development in Cairo, last September, and at the Summit on Social Development in Copenhagen. For all the fanfare and the media's cynicism about the benefits of assembling world leaders, both of these meetings reached significant agreement on important matters that will shape the UN's future. The agreement at Cairo that population control, through appropriate methods, is a precondition for developmental progress in many countries, certainly an indispensable condition for the 'higher standards of living'¹⁹ envisaged by the UN Charter, properly places population issues at the heart of the development debate.

The message from the Social Summit is that governments should match their commitment to social justice with spending and program decisions which ensure that economic rationalism is tempered by considering the impact of programs on individuals, and that social progress is closely linked to promotion of human rights, as set out in the UN Convention on Economic, Social and Cultural Rights.²⁰ The result should be a gradual shift in the way that UN bodies and member states approach development issues, putting more substance into the UN Charter goals of 'social progress and development'.²¹

Much of what the UN will achieve in the area of economic and social development will be in pursuit of the concept of sustainable development. Monitoring the implementation of *Agenda 21*²² is the central task of the Commission on Sustainable Development created after the Rio Conference. It is now fundamental to the work of the UN General Assembly's Second Committee and has already had a pronounced impact across the UN system. There is already increasing stress on using the UN as the forum for negotiating and establishing broadly acceptable standards and arrangements for rational and cooperative management of scarce resources. The *Law of the Sea Convention*,²³ which has provided in effect a common language for interaction between states on matters affecting two-thirds of the world's surface, is one example. The current negotiation of a Convention on Straddling Fish Stocks is another which highlights the

¹⁹ UN Charter art 55.

²⁰ International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 993 UNTS 3; 6 ILM 360 (entered into force 1976).

²¹ UN Charter Preamble.

²² *Agenda 21: United Nations Program of Action for Sustainable Development*, Report of the United Nations Conference on Environment and Development (Rio de Janeiro, 3-14 June 1992) UN Doc A/CONF 151/26 (Vol I-III).

²³ UN Doc A/CONF 62/122; (1982) 21 ILM 1261 (entered into force 1994).

role the UN is increasingly called on to play in developing a framework for addressing unsustainable patterns of consumption and exploitation of resources. Competition over scarce resources is a potential source of instability and conflict in many regions, even between affluent countries, as we have observed between Canada and Spain. Such threats demonstrate how important it is, in security terms, for the UN to strengthen its ability to deal with developmental issues.

C The Human Rights Agenda

Since 1945 the international community has created an extraordinarily impressive-looking array of human rights machinery, including those treaty-based bodies established pursuant to the provisions of the six major UN human rights instruments. Two Australians, Professor Philip Alston and Justice Elizabeth Evatt, serve with distinction on two of these bodies, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee. But in practice this machinery has been something of a cul-de-sac which has been compartmentalised away from the mainstream of UN activity, largely neglected by member states, severely underfunded, understaffed, lacking coordination and simply not able to meet the steadily increasing demands placed upon it. A great deal of effort is going to have to go into developing the supervisory machinery of the major human rights treaties to maximum effect. The most significant step that could be taken to reform the system would be to reduce the number of treaty bodies from the present six to one, which would reflect the universality of all human rights and simplify the present onerous reporting obligations. It would also ensure an ordered, systematic development of jurisprudence in the field of human rights.

At least the political environment for change has begun to come together, particularly at the Vienna World Conference on Human Rights in June 1993. Governments of the world reaffirmed at Vienna the validity of the basic concepts which have underpinned the UN's role in the promotion and protection of human rights, namely, the universality of fundamental human rights; the indivisible and interdependent nature of human rights; and the legitimate interest of the international community in violations of human rights wherever they occur. The Vienna Declaration and Program of Action, in its opening paragraph, states that '[h]uman rights and fundamental freedoms are the birthright of all human beings: their protection and promotion is the first responsibility of Governments.'²⁴

The Vienna World Conference recognised the necessity for a continuing adaptation of the UN human-rights machinery to current and future needs in the promotion and protection of human rights. A major task ahead of the international community is to end the disparity between the proclaimed priorities of the UN and its allocation of resources for the protection of human rights. We should look to the UN to continue to build on its array of human-rights machinery, not so much by further proliferation of treaty bodies, thematic and country rap-

²⁴ UN Doc A/CONF 157/23 (1993).

porteurs, experts and working groups, but by giving more teeth to these areas. The human, financial and managerial resources available to the Centre for Human Rights must be commensurate with its expanding mandate. Greater resources are also required to ensure that the newly-created Office of the High Commissioner for Human Rights develops the same kind of impact as, for example, the High Commissioner for Refugees.

There are three specific new directions I would particularly like to see the UN take. The Beijing Conference in September 1995 must set out the parameters for the UN's role in promoting gender equality. It is reasonable to expect the organisation not only to advocate but also to embody equal status for women, including in high-level positions and in all its decision-making bodies. Mainstream human-rights bodies have not given detailed consideration to women's rights issues. Specific action is needed to ensure these issues are fully integrated into mainstream human rights forums. I also look to the UN to give due attention to the needs and aspirations of the indigenous community by adopting a Declaration on the Rights of Indigenous Peoples, and developing more substantial programs to assist in the exercise of those rights. And in the area of economic, social and cultural rights more generally, concerted effort is required to ensure that full recognition and emphasis is given to these rights at a national, regional and international level. This could include the development of indicators to measure progress in the realisation of these rights. It is important in this context that we understand the significance attached by developing states to the right to development and poverty alleviation. Without the developed world recognising such a right, the international community risks increased division between governments of the North and South.

Human rights observance has, as I have already emphasised, its own profound significance for peace and security. The most basic of rights, the right to life, is directly dependent on the maintenance of peace. The bloody brutality of Bosnia, and the horrifying genocide in Rwanda, are only the most recent compelling reminders of the need for the international community to grapple with the problem of human rights at the most basic level of all. Security in the post-Cold War era has as much to do with the protection of individuals as it has to do with state security and the defence of national borders. From this perspective, the options for preventive strategies to avoid internal conflict emerge more clearly and compellingly. Recent experience underlines the lesson that a state whose government systematically disregards human rights, ignores the rule of law and fails to strive for equitable development and distributive justice, is a state showing clear signs of heading towards breakdown and civil strife.

The UN's human rights monitoring mechanisms and Centre for Human Rights should be an integral part of its 'early warning' capacity. Advisory services and technical assistance programs of the Centre for Human Rights, which include activities to develop the rule of law, an independent judiciary and a human rights culture emphasising tolerance and non-discrimination, represent the tools for effective strategies for minimising the risk of breakdown and

violence. Also important are measures to develop independent national human rights machinery. These programs must be strengthened and supported in a practical way to ensure the development of domestic infrastructure which supports human rights and national human rights machinery. Our funding of Brian Burdekin's appointment for two years as a Special Adviser to the High Commissioner for Human Rights with a particular brief to work on national institutions is an indication of how seriously we take this part of the human rights agenda.

National authorities are not always willing or able to deal effectively with gross violations of human rights such as genocide. It is, of course, not acceptable that the perpetrators of ethnic cleansing and related crimes should go unpunished. Punishment is crucial to avoid creating a climate of impunity. In this sense, the recent establishment by the Security Council of *ad hoc* war crimes tribunals for the former Yugoslavia and Rwanda is a demonstration that the international community will not let the most serious crimes go unpunished. In this context, the Australian Government also strongly supports the establishment of a permanent international criminal court to deal with gross violations of international criminal law, wherever they occur.

II TOOLS

I have identified elsewhere the main issues of structure and process which I think the UN simply has to resolve if it is going to credibly and effectively grapple with the demands being made upon it.²⁵ They are: restructuring and revitalising the Secretariat; solving the UN's endemic funding problems; improving the management of peace operations; giving priority generally to prevention throughout the UN system; raising the profile specifically of peacebuilding; rethinking the whole question of the coordination and delivery of humanitarian relief; and regenerating the Security Council by making its structure more representative of 1990s, rather than 1940s, realities. For present purposes I shall focus simply on the two most basic questions: administration and management, and funding sources.

A Administration and Management

The UN simply has to have a more modern and efficient structure and administrative system. This should include a basic change to the senior decision-making structure of UN headquarters in New York to ensure that the Secretary-General has an effective chain of command to exercise authority over the whole range of major UN operations, not just in the peace and security area. Restructuring is needed to consolidate and coordinate the more than 40 separate Departments, offices, agencies, instrumentalities and commissions which currently report directly to the Secretary-General. I believe there is a strong case

²⁵ Evans, *Cooperating For Peace*, above n 7, 169-82.

for creating a new working collegiate executive of four Deputy Secretaries-General to work with the Secretary-General, responsible respectively for Economic and Social Affairs, Peace and Security Affairs, Humanitarian Affairs and Administration and Management.

The UN, not only in its headquarters in New York, Geneva and Vienna, but also in its regional commissions, programs and funds, will also need to develop highly skilled Secretariats with a greater capacity to meet member states' aspirations for concrete assistance across the range of the UN's activities. A key challenge is to introduce modern personnel practices throughout the UN system. I am encouraged that, for the first time, a new Under Secretary-General for Administration has grasped the nettle of personnel reform: Joseph Connor, the former Chief Executive Officer of Price Waterhouse International, took up the post last year and has already moved to implement a comprehensive human resources management strategy. Australia is one of Connor's strongest supporters; as well as winning the General Assembly's backing for his undertaking, we have contributed the time and expertise of Brian Gleeson, a senior executive from the Public Service Commission, who worked on secondment in New York for several months in 1994 introducing training programs and supporting the introduction of merit-based recruitment procedures based on our own public sector experience. The Commonwealth Solicitor-General, Dr Gavan Griffith, has also recently been on a secondment rewriting and modernising the Secretariat's personnel administration regulations as part of a wholesale review of the UN's legislative instruments.

A popular misconception about the UN is that it has created an over-bloated bureaucracy. This is not correct, either in terms of absolute numbers or recent trends. UN and agency budgets have stuck to Zero Real Growth since the mid-1980s, and UN headquarters implemented a 14 per cent cut in overall staff numbers in the late 1980s, following pressure from the Reagan administration. Few, if any, member states have introduced such efficiency measures. The total number of staff, from Boutros Boutros-Ghali to the office cleaners, in the entire UN system including the specialised agencies is 51,000.²⁶ Core professional and administrative staff (in New York, Geneva, Vienna and in the UN's five regional commissions, including the UN's policy and program areas across the full range of functions which need to be integrated in the new UN) only numbers 13,000. Compare this to the Australian Capital Territory government bureaucracy, some 22,000 in all, or to the Victorian state public sector, which, even after Premier Kennett, is over 240,000 people.²⁷

But overall numbers are not really the critical issue for the UN's future. What really matters is the quality, impartiality and capacity for independent analysis of the Secretariat, and the allocation of resources to existing and emerging priorities. Of increasing importance is gaining the appropriate skills for new

²⁶ Erskine Childers and Brian Urquhart, *Renewing the United Nations System* (1994) 27.

²⁷ Estimates supplied by the ACT Department of Public Administration and the Victorian Work Force Management Unit (includes local government sector).

and developing functions. An example, which Australia has helped to establish and continues to support, is the UN Institute for Training and Research (UNITAR) course in training in peacemaking and preventive diplomacy skills, one of the elements to expanding the slim base of skilled negotiators and conflict resolution experts in the UN Secretariat. Another key to improving the quality of Secretariats will be to meet the targets for equal employment opportunity, notably for gender equality, that have been set in recent personnel strategies.

The burgeoning cost of peacekeeping and emergency humanitarian relief has meant that, even though core budgets have been controlled, an increasing amount of government funds have been channelled to the UN in recent years. The major contributors have pressed for better systems of accountability and prevention and detection of fraud. The United States has pressed strongly for the creation of an independent Inspector-General, with powers of oversight and investigation, for the UN and all the agencies. The outcome was the establishment last year of an Office for Internal Oversight Services. The last few years have seen a more general overhaul of budget control arrangements. In many of the major funds and in the governing bodies of specialised agencies, there have been moves to ensure higher levels of financial responsibility and greater transparency in programming and budgetary processes so that member states can better ensure that multilateral activities respond to their requests and decisions.

B *Funding*

There is no use talking about reintegrating the UN, or reshaping its responsibilities, if the resources are not available to meet member states' demands. It is the responsibility of member states to rectify the current financial problems, and the perennial cash crises faced in UN headquarters because of overdue payments. The solution is simple: all member states should meet their obligations under the UN Charter to pay their assessed contributions in full and on time.

If the UN does develop in the directions I have indicated, it may well need a bigger revenue base. An active approach to peacebuilding in itself could represent a major new demand, although this should be viewed against the far higher costs of failing to implement effective preventive strategies. The time has come to look at more innovative approaches to raising funds. One possibility I have raised, in the UN General Assembly and elsewhere, is to consider more seriously than hitherto the application of levies on certain kinds of international transactions like air travel or foreign exchange, which can only take place when a minimum degree of international peace and stability is maintained, to which in turn the UN makes a major contribution. It is a fact of political life that any new tax or impost raises sensitivities and technical complexities, but I continue to believe that an international levy on such transactions would be an equitable way of putting a price on an important public good. And the returns, for quite

small UN imposts are, by the UN's standards, very large. The total value of global foreign exchange turnover, for example, is expected to amount to over US\$300 thousand billion in 1995:²⁸ a levy on these transactions of just 0.001 per cent, if it could be collected, would yield over \$3 billion, which is close to the current annual cost of all the UN's peacekeeping operations.

I have no illusions about the political difficulties concerning the implementation of any of these kinds of strategies, not least those generated by member states who are not especially uncomfortable about having a UN struggling to pay its way. But if we take the UN seriously, as we must, we have to take its resource problems much more seriously than the international community has so far been inclined to do.

III STRATEGIES

I have tried to set out a reasonably comprehensive view of where the UN's future directions should lie, its priority tasks, and of some of the tools that will be needed if the organisation is to follow these signposts. At least some of you will be asking whether the gap can ever be bridged between the conception and the creation, between the roadmap and heading down the highway. With 185 member states, and a tradition of relying largely on consensus decision-making, the UN is sometimes said to be beyond reform. But the UN is not static, and significant changes have been agreed upon and introduced, both by this Secretary-General and by the collective decisions of member states. The pace of change is no longer glacial, in fact some of the significant improvements and innovations of the last few years, such as the establishment of the High Commissioner for Human Rights following the Vienna Conference, and some now under serious consideration, such as the International Criminal Court and the possibility of redundancy packages to weed out non-performing staff in the UN Secretariat, would have been dismissed as inconceivable less than a decade ago.

In the last 12 months, there has been a marked proliferation of reform proposals, with a range of working groups already established and negotiation of reforms intensifying in the UN's Anniversary year. These proposals cover many aspects of the three basic UN Charter objectives, and indicate that many others have the same general ideas. But I am realistic enough to accept that many of the UN's problems cannot be solved in the short-term. Confidence in the UN tends to wax and wane, and we are at present in a period of relative pessimism, a downturn in confidence following its initial revival in the immediate post-Cold War period. It is not easy to generate enthusiasm for discussion of reform proposals at a time when, their great expectations deflated, many have swung

²⁸ Bank for International Settlements, 'Central Bank Survey of Foreign Exchange Market Activity in April 1992', March 1993. The BIS estimates that global foreign exchange turnover, net of double-counting of transactions within and between markets, was around US\$880 billion in April 1992. Assuming a continuation of 12 per cent annual transaction growth, and with 250 business days per year, this represents US\$309 trillion for the year to April 1995.

back to excessively negative and even dismissive views of what the UN could become.

There are other reasons to doubt whether much significant progress towards a more effective UN can be achieved in this anniversary year. Although rhetorical recognition of the need for reform has become routine, many governments are largely content with the *status quo* unless and until they see their specific interests threatened. Attacks upon the UN's credibility, the waning support of the United States Congress, and the Washington Administration's uncertainty about whether it should play a leadership role in the UN, are all obstacles to creating the necessary will amongst the majority of governments to tackle reform as a matter of priority. There is also some risk that the tension expressed through the developing countries' insistence that the reform focus must now shift from the *Agenda for Peace* to the *Agenda for Development* will see a North/South impasse over the UN's priorities.

To make the task even more difficult, the practitioners of reform, those industrious delegates who negotiate the details in New York or Geneva in working groups, informal meetings and even what are known as 'formal informals', generally work from narrow, issue-specific briefs. Sometimes they reflect the same compartmentalisation, of expertise and perspective, that has come to characterise much of the UN's work. The focus is very much on 'micro-reform' and there has been no agreed process for bringing together the many strands of reform and integrating the results of changes agreed across the range of working groups. The result is that most of the 'big picture' ideas for the UN's future come from outside, and these often lack a practical sense of the art of the possible in the UN. The Carlsson/Ramphal Commission's Report on Global Governance, for example, was submitted in January with a range of proposals.²⁹ The analysis is generally very good, and many specific proposals are worthwhile, including the emphasis on peacebuilding through arms control and disarmament, on human security and on other preventive approaches, but there are too many suggestions which are too far out of the mainstream and will certainly be seen as such, to make it, as a whole, a workable blueprint for change at the UN. A study by another group of eminent persons sponsored by Yale University and the Ford Foundation is about to be released. But at present there is no provision for giving serious consideration to these ideas during 1995, let alone acting on them.³⁰

If what I have just said seems rather gloomy, it is really only intended to make it clear that it will be a hard row to hoe in converting the UN into a more effective agent for achieving the main purposes of the UN Charter. But making possible more effective multilateral action through a reformed and revitalised UN is such an important task that we cannot let the difficulty of achieving everything prevent us from trying to do anything.

²⁹ The Carlsson/Ramphal Commission Report, *Global Governance* (January 1995).

³⁰ Independent Working Group on the Future of the United Nations, *The United Nations in its Second Half-Century*, Yale University: The Ford Foundation, 3rd Draft, 13 April 1995 (forthcoming).

And there have been some hopeful developments recently. The drafting committee, chaired by Australia's Ambassador to the United Nations in New York, Richard Butler, has agreed on a single negotiating text for the 50th Anniversary Declaration for adoption by the Heads of Government summit in New York in October which is succinct and points to most of the general areas for reform which I have stressed.³¹ Furthermore, there is now serious discussion amongst delegations about creating a group to work on synthesising different reform results and developing agreement on broad directions for the UN. We have ourselves begun to discuss the elements for such a forward-looking agenda with others, with the aim of having this endorsed at the 50th session of the General Assembly.

Even if the gains we make in 1995 are unspectacular, we must stick with our broader vision of what the UN should become. As Dr Evatt showed at San Francisco, energy and persistence are formidable qualities when accompanied by a clear sense of where one wants to go. The task at hand is to get some consensus on the UN's agenda, and particularly on what is to be done to make the UN more effective; to get task priorities broadly identified and agreed upon; and to begin some of the basic internal structural reform. That might not add up to the revolution that some of us might have hoped for with the UN's 50th Anniversary. But it would make 1995 a very significant year indeed for the UN, and give us grounds for very real optimism about the longer term future.

³¹ *Report of the Preparatory Committee for the Fiftieth Anniversary of United Nations*, UN Doc A/49/48, Supp No 48.