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**JOINT STANDING COMMITTEE
ON FOREIGN AFFAIRS, DEFENCE AND TRADE**

Human Rights Subcommittee

Monday, 24 November 2008

Members: Senator Forshaw (*Chair*), Mr Hawker (*Deputy Chair*), Senators Arbib, Mark Bishop, Ferguson, Fifield, Johnston, Moore, O'Brien, Payne and Trood and Mr Baldwin, Mr Bevis, Mr Danby, Ms Annette Ellis, Mr Gibbons, Ms Grierson, Mr Hale, Mr Ian Macfarlane, Mrs Markus, Mrs Mirabella, Ms Parke, Ms Rea, Mr Ripoll, Mr Robert, Mr Ruddock, Ms Saffin, Mr Bruce Scott, Mr Kelvin Thomson and Ms Vamvakinou

Human Rights Subcommittee members: Ms Rea (*Chair*), Mr Ruddock (*Deputy Chair*), Senators Fifield, Forshaw (*ex officio*), Moore and Trood and Mr Danby, Ms Annette Ellis, Ms Grierson, Mr Hawker (*ex officio*), Mrs Markus, Ms Parke, Mr Kelvin Thomson and Ms Vamvakinou

WITNESSES

**CHARLESWORTH, Professor Hilary, Professor of International Law and Human Rights; and
Director, Centre for International Governance and Justice, Australian National University..... 1**

SHEARER, Emeritus Professor Ivan AM, Member, United Nations Human Rights Committee 1

Committee met at 9.36 am

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CHARLESWORTH, Professor Hilary, Professor of International Law and Human Rights; and Director, Centre for International Governance and Justice, Australian National University

CHAIR (Senator Forshaw)—Good morning ladies and gentlemen. My name is Senator Michael Forshaw and I am the chair of the Joint Standing Committee on Foreign Affairs, Defence and Trade. I welcome you all here this morning to this forum on the 60th anniversary of the adoption of the Universal Declaration of Human Rights by the United Nations in December 1948.

Firstly, I acknowledge the traditional owners of the land and pay our respects to their elders, both past and present. I particularly welcome distinguished guests: I acknowledge the Hon. Bob McMullan, the Parliamentary Secretary for International Development Assistance, the Hon. David Hawker, Deputy Chair of the Joint Standing Committee on Foreign Affairs, Defence and Trade and a former Speaker of the House of Representatives, my parliamentary colleagues, members of the joint committee and particularly Kerry Rea, who is the chair of the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade. Kerry will be introducing our second speaker later in the proceedings.

I also acknowledge Richard Towle, the regional representative for the United Nations High Commission on Human Rights; Dr Helen Watchirs, the ACT Human Rights and Discrimination Commissioner; and representatives of the Attorney-General's Department. I particularly welcome our two guest speakers, Professor Ivan Shearer and Professor Hilary Charlesworth.

In any list of the great figures of the 20th century, when they compile the list of the top 10, Franklin Delano Roosevelt always appears at, or near, the top. Yet, interestingly, it may well be that FDR's wife, Mrs Eleanor Roosevelt, has had a more lasting impact on the future of the free world. I am not going to debate that this morning but certainly Eleanor Roosevelt was, in many ways, the driving force behind the adoption by the United Nations of the Universal Declaration of Human Rights on 10 December 1948. She said, having chaired the committee that developed the ultimate document, to the UN General Assembly:

We stand today at the threshold of a great event both in the life of the United Nations and in the life of mankind. This declaration may well become the international Magna Carta for all men everywhere. We hope its proclamation by the General Assembly will be an event comparable to the proclamation in 1789 [of the French Declaration of the Rights of Man], the adoption of the Bill of Rights by the people of the United States, and the adoption of comparable declarations at different times in other countries...

That was 60 years ago and today the Joint Standing Committee on Foreign Affairs, Defence and Trade is holding this forum to review whether or not those aspirations that Eleanor Roosevelt campaigned so tirelessly for have borne fruit.

We have two distinguished speakers, Professor Ivan Shearer and Professor Hilary Charlesworth. Our first speaker is Professor Ivan Shearer, AM. He is a renowned international human rights law scholar and practitioner. He has been a member of the United Nations Human Rights Committee since 2001. He is a retired professor of law with the University of Sydney and a former president of the Australian branch of the International Law Association. He has also served as a judge with the International Tribunal for the Law of the Sea, and as a member of both the Permanent Court of Arbitration in The Hague and the International Institute of Humanitarian Law in Italy. In 1995, Professor Shearer was made a Member of the Order of Australia. He is a most distinguished and expert guest. I now invite Professor Shearer to address the forum.

Prof. Shearer—Thank you very much, Senator Forshaw. I also wish to thank Ms Rea, the chair of the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade, for inviting me to address you on this important occasion. As I was waiting to get into this building, a group of schoolchildren was also waiting to get in—which is always pleasing to see. One of them came up to me and said, ‘Are you Mr Kevin Rudd?’ I said, ‘No, I am not. If I were, it would be an out-of-body experience because I have read in this morning’s paper that he is in Lima, Peru.’ The boy said, ‘Oh. Where?’ I did not have time to explain where Lima was. I also looked for my United Nations tie this morning but I could not find it. Maybe it is a Kevin Rudd kind of tie I am wearing, I am not sure. But I did find a United Nations pen, so I can produce that as evidence of my commitment to the United Nations and to the cause of human rights.

I have been asked to speak by way of an overview of where we have travelled since 1948. I have a written paper in case it is required, but I am not actually going to read it because I would prefer to elaborate on the thoughts in my paper in, I hope, a more immediate fashion. I want to go back a little, to before 1948, to talk about the origins of the idea of human rights because, before the Second World War, the concept was really hardly spoken of at all, except in terms of minorities. The accepted view of international law—and it has only gradually been changing since 1945—is that what governments do in relation to their own people is done behind the veil of sovereignty. They cannot even be criticised for what they do, let alone have enforcement action taken against them for how they treat their own peoples.

In the United Nations Charter there are several very important references to human rights: one of the principles of the United Nations is respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion. It was in order to put flesh upon those bones that the United Nations, early in its career—in 1946—established something called the Human Rights Commission. The Human Rights Commission was guided, as Senator Forshaw has said, by Eleanor Roosevelt, and she guided it somewhat nervously because she wondered whether she was up to the job. But she did a magnificent job in ultimately guiding the work of the commission towards the proclamation of the Universal Declaration of Human Rights. Not only was it responsible for producing the universal declaration, the 60th anniversary of which we celebrate very shortly, but it also promoted the other, more detailed, conventions on human rights with their monitoring and enforcement mechanisms. This has continued up to recent times where the Human Rights Commission has been replaced by something called the Human Rights Council. I think that my colleague, Hilary Charlesworth, will be speaking a little bit more about that.

I say you want to start with 1945 but also 1946 and 1947 because, in the aftermath of the Second World War, where not only its horrendous toll in human life but also the revelations of the Holocaust and other unimaginable abuses of human rights came to light, various efforts were made, in the peace treaties with the former Allies of Germany, for example, to insert human rights provisions and enforcement into those peace treaties. Dr Evatt was adamant that not only should there be human rights provisions in those but that they should be enforceable human rights provisions. But he was unsuccessful. This was the beginning of the Cold War and the Soviet Union, since nearly all the former Axis states except Italy were now behind the Iron Curtain, did not want enforceable human rights. So it ran into the ground.

Mary Ann Glendon has written the most accessible and comprehensive book, called *A World Made New—Eleanor Roosevelt and the Universal Declaration of Human Rights*. ‘A world made new’ is, I think, an apt description of what we are talking about. In her book she emphasises how the early work of Dr Evatt in relation to the peace treaties bore fruit not so much in the universal declaration as in the later European Convention on Human Rights. But that takes us down a side track, though an important side track, with which we have no time to deal. The other thing that happened before the universal declaration—in the same year—was the genocide convention. That tackled the topic which I suppose was at the top of people’s minds so far as human rights were concerned. That, as it were, cleared the way to look more generally at human rights.

The United Nations Human Rights Commission was aided often—I suppose there would be some resonance with a number of public servants in this room—by the backroom people, who often do all the hard work but do not get enough of the credit. The real hero of the Universal Declaration of Human Rights is not Mrs Roosevelt, important though her work was, and it was not Dr Evatt, even though he presided at the assembly session which adopted the human rights declaration. It was a man called Dr John Humphrey, of Canada, who produced the drafts. We often talk about a document that has been produced by a committee as a camel—the horse designed by a committee—but Dr Humphrey produced a very sleek racehorse which was not too much messed about with in the final declaration. You were all given copies of the declaration at the door. I suggest you glance at it now. Look how spare the statements are. They are not ringed with all kinds of ifs, buts, wherefores and so on. It is something that speaks directly to people: ‘everyone shall have the right to’, ‘everyone shall have the freedom to’ and so on. It is a beautiful document.

It was adopted on 10 December 1948. It was finally put to the vote at four minutes to midnight on that day, with Dr Evatt with his gavel, ready to take the vote. The voting was 48 in favour, zero against—there was a gasp of relief going around the room—and eight abstentions. Why do I emphasise this? In the lead-up to that vote, there were all kinds of indications about the Soviet bloc—remember that the Cold War was developing and the Berlin airlift was in progress when this vote was taken. The meeting was held in Paris. Why? Because the UN building in New York was not yet ready and the Russians would have nothing to do with all those lovely buildings in Geneva that were left over from the League of Nations, because they had been expelled from the League and did not want anything to do with it. So the big meetings of the UN had to take place in London or Paris.

They were in the Palais de Chaillot in Paris on 10 December 1948. Everybody was wondering whether the Soviets were going to vote against this declaration, because it included such things as free and fair elections, the right of any person to leave their country and so on. There were a

number of provisions that would be uncomfortable, to say the least, to countries of the Soviet bloc. Nevertheless, to everybody's relief, they abstained. One country, Saudi Arabia, abstained because there was a provision in the declaration that people not only had the freedom to practise their religion but also had the freedom to change their religion. That, nowadays, is something which has become more and more controversial amongst Islamic countries, but it is very interesting that, in a speech made on the day by Zafrullah Khan, later a judge of the International Court of Justice but who was on that day representing Pakistan, he actually cited the Koran in favour of the freedom not only to practise your religion but also to change your religion. That is an interesting note that came out of this rather fraught meeting on 10 December 1948.

Everybody knows who the other abstainer was: South Africa. The Malan nationalist government had recently taken power in South Africa, and it voted against the declaration because of its references to nondiscrimination on the grounds of race. The importance, I suggest, was not only the relief that was felt and the success and congratulations to all concerned immediately after the taking of the vote; the importance of the universal declaration has been found in the years subsequent to 1948. I want to stress that it is a 'universal declaration'—universal because it speaks to everyone but also a declaration. A declaration is different from a treaty, convention or covenant because a declaration does not require a signature or ratification. It therefore had the potential—and this made it something of a trojan horse, because it was such a widely accepted declaration with no negative votes—in the fullness of time, according to processes that I spend at least two weeks explaining to my law students, to come into the realm of customary international law, or, as I prefer to call provisions such as this, general international law. It becomes binding on everybody.

That is important in our region of the world and in other regions of the world. There were 162 parties to the subsequent 1966 International Covenant on Civil and Political Rights, which elaborates in detail and provides machinery in relation to the 1948 declaration. This is an instrument in normal treaty form requiring express consent by way of signature and ratification. But there are 192 members of the UN, so what about the other 30? They include important countries in our region like Singapore and Malaysia. The significance for them of the universal declaration is that they too are bound in international law by the universal declaration, which contains all the essential human rights provisions that are contained in the later, more elaborate documents. The only difference is that countries like those who are not parties to the covenant are not subject to the reporting requirements and other machinery provisions..

After 1948 you had decolonisation rolling forward into the late fifties and early sixties. Many of those countries adopted constitutions which contained human rights protections and they drew on the universal declaration for the wording of their human rights provisions. But there was no direct enforcement mechanism. This was something which Colonel Hodgson, who represented Australia in the working of the Human Rights Commission which elaborated the declaration, was constantly on about—no doubt under instructions from Dr Evatt because Dr Evatt had been pushing for enforcement mechanisms too in relation to the peace treaties. But were we to get those enforcement mechanisms in 1966?

What happened in 1966 was that, after many delays caused mostly by the Cold War, two separate covenants were adopted: the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. You will see if you look again at your universal declaration that there is a separation there too because rights to education, rights to health and so

on are general aspirations which cannot be necessarily put into effect overnight and therefore are to be progressively achieved. That is why they were later put into a separate basket and called the International Covenant on Economic, Social and Cultural Rights. Something like the prohibition against torture is not something that you progressively introduce; it is something which is just wrong and has to stop now. So all these more peremptory, or what we call the negative human rights, are put into the first basket, the International Covenant on Civil and Political Rights.

Did we achieve the cherished goal of enforcement? Well, no, not really. What we achieved in the 1966 covenant was a monitoring mechanism, a provision which required all states to report on how they have been implementing the covenant and on any factors which are impeding the implementation of the covenant. But there is no provision for compulsory jurisdiction or settlement of disputes. That came in two forms.

In the covenant it says that any state may bring before the Human Rights Committee an allegation that another state is not living up to its obligations under the covenant. That is subject to a special declaration of acceptance. It has never been invoked. I think the reason is that most states believe that they live in glass houses and they should not throw stones or that they will not earn any brownie points by pointing the finger at others. Although I gather, along the grapevine, that there was a serious consideration given by Australia and a group of other countries of bringing Zimbabwe before the committee recently. But, again, that was thought not to help the situation. Whether it might help it now, I do not know.

The other form is the optional protocol whereby individuals can bring a complaint before the Human Rights Committee that, having exhausted all avenues of redress, they wish to bring a violation to the committee for its views so long as they themselves are directly involved. You cannot bring a generalised complaint, let's say, about Aboriginal housing, for example, as a general issue. However, that issue would be relevant in the examination of Australia before the committee under the monitoring provisions. Australia does come up before the Human Rights Committee in its New York session in this coming March.

So that is what we have got now. It is perhaps not what everybody would have desired but it is what was practically attainable, given the political circumstances of the time. I am sure that Hilary will speak more about this later but the Human Rights Council, which I must say everybody I have spoken to is rather disappointed with, has got a system of what is called universal periodic review whereby states, whether or not they are party to the covenant, can be brought up for examination. But there are all kinds of problems with that. I will not go into those but, again, it is not as promising as it was meant to be.

My task is not so much to look to the future as it is to look to where we are right now, looking back over 60 years. I want to say something briefly about where Australia stood in all of this after 1948. For the purposes of this presentation, I had a look at Australian textbooks and periodical articles and so on in order to answer the question: how much was Australia concerned with the universal declaration in the period from, let us say, 1948 up to about 1972, when there was a distinct quickening of interest? In the first book that was published with the title *International Law in Australia*—it was published in 1965 under the auspices of the Australian Institute of International Affairs—it is remarkable that there was not a single chapter on human rights. That is extraordinary. And in the index there were only two references to human rights. A

subsequent edition was published in the 1970s, and that did have a chapter on human rights by the late Joe Starke. That contains a lot of useful information.

What I am suggesting is that up until about 1972, the universal declaration was taken as being an important document but one that did not really affect Australia very much. There are at least two reasons for that. Maybe it was because Australians thought, 'We have got the rule of law. We have got all the common-law remedies. We are pretty good. There are no really bad things happening in Australia. We do not need to look at the universal declaration when our courts are considering matters. The common law is enough. And the common law is a flexible instrument. It can pick up necessary human rights obligations as one goes along.'

The other reason was that the attitude towards the incorporation of international law by Australian courts was at a very rudimentary stage. The accepted theory was that international law—and that would include the universal declaration, treaties and principles of customary international law and so on—were not part of Australian law but were required to be actually implemented by legislation. At that time, even if you invoked the universal declaration before a court you would just get a blank look from the bench.

Things began to change in 1973. First of all, in that year the Whitlam government introduced a bill for a national bill of rights. This would actually have made the provisions of the covenant, which built upon the universal declaration, part of the law of Australia. Not only would it make it part of the law of Australia, it would make it part of the national law of Australia, overriding the states because reference was made to the external affairs power of the Commonwealth—the federal parliament had superior power—to implement international treaties and other rules of international law.

As everybody knows, that foundered upon the opposition of the states. The states saw that as an attack on what they regarded as the reserve domain of state powers, so it was not successful. And it has still not been successful, although now we all know that consultations are in progress towards the introduction of a national bill of rights. The ACT and Victoria have taken the initiative—they have got their separate bills, or charters of rights, in their legislation—but we really need a national one. I will come back to the desirability of that in a moment.

I also mention the question of the external affairs power. Back in 1973, it was very doubtful whether or not the external affairs power would support a national bill of rights, but that was put to rest by the decision of the High Court of Australia in the case of *Koowarta v Bjelke-Petersen*, which concerned the implementation of the racial discrimination convention. The High Court in 1982 held that the implementation of human rights conventions were within the scope of the external affairs power and therefore it upheld the legislation. That then put that matter beyond doubt. The way has been clear, at least since 1982, for a national bill of rights. The reason it has not been introduced is really political. It has been thought that it is best not to rattle the cages of the states on this and to work for a more progressive development. Justice Kirby, for example, has said we can do it through the common law—the courts can introduce human rights into their deliberations. But Justice Kirby has since changed his mind. A few years ago, he announced that he now believes that a national bill of rights is the right way to go.

I, too, have changed my mind. I think the tipping point for me was the decision of the High Court of Australia a couple of years ago in a case called *Al-Kateb v Godwin*, in which the High

Court decided by a majority that you could not imply in the legislation—under which a man was to be deported but, as there was no country in the world that was willing to take him, he could be subjected to indefinite detention—some kind of exception based on human rights. It was practically impossible to carry out a deportation. It is pleasing to see that not only Justice Kirby but also Chief Justice Gleeson dissented in that case.

I am almost out of time and I want to leave time for discussion, so I will just make a few brief points by way of summing up. First, the Universal Declaration of Human Rights stands even today, 60 years after its adoption by the United Nations, as the single most important statement regarding human rights and is one of history's most influential documents on any subject. It has achieved unchallenged status as binding on all states under general international law. The subsequent International Covenant on Civil and Political Rights of 1966, which built upon and elaborated the provisions of the universal declaration, presently has 162 parties, but for those that have not ratified the covenant the declaration is an unavoidable source of obligation.

Second, although slow at first to react to the challenges posed by the universal declaration, Australia has in the past 35 years become a party to the major international instruments regarding human rights that have built upon that foundation. It has also accepted further voluntary obligations such as those under the optional protocol to the International Covenant on Civil and Political Rights. By the standards set by the universal declaration and subsequent human rights instruments, Australia is travelling reasonably well. We can thank our stable political institutions, our history of dedication to the rule of law and a free and vigorous media. Third, more remains to be done to realise fully the vision of 1948. There are gaps in our law and practice that parliaments, both federal and state, have failed to remedy or the courts have failed to redress—or, as in *Al-Kateb*, have been prevented from addressing. The time has come for a national bill of rights. The existence of a bill of rights, in whatever form, will present a highly visible and unavoidable roadblock to hasty legislation, a protection against insensitive decision making by the executive and a salutary guide to courts and tribunals.

I end on one cautionary note: in writing a bill of rights the utmost care must be taken not to depart from the essential wording of the universal declaration and the subsequent instruments that have been based on it. However tempted one might be to improve on the wording, the danger arises that Australian courts would then be deprived of the ability to take into consideration the decisions and opinions of other judicial institutions interpreting and applying the same words. These include the national courts of other countries and such international courts as the European Court of Human Rights. Of course, this is potentially a two-way exchange in which Australian jurisprudence could then helpfully influence the decisions of courts and tribunals elsewhere. Thank you very much.

CHAIR—Thank you, Professor Shearer. We are going to change our program slightly and proceed straight to Professor Charlesworth's address, followed by a general question and answer session. It is my pleasure to introduce Professor Hilary Charlesworth, a distinguished scholar and expert in the field of international law and human rights. She is currently Professor of International Law and Human Rights and Director of the Centre for International Governance and Justice at the ANU. As I said, she is a specialist in international law and human rights with an international reputation. She was awarded a Federation Fellowship by the Australian Research Council in 2005 and was joint winner of the Goler T Butcher medal awarded by the

American Society of International Law in 2006 for outstanding contributions to the development of international human rights law.

Prof. Charlesworth—Thank you for the invitation to speak, Senator Forshaw and Ms Rea. I join with other speakers in acknowledging the traditional owners of the land on which we are meeting, the Ngunawal people, distinguished guests and my own local member, Mr Bob McMullan. It is very distinguished company.

I thought I would do a companion piece to Ivan's paper, which I have had the great advantage of reading, and reflect on some aspects of the future of the universal declaration. Usually, when we are speaking about 60th birthdays, it is a moment to celebrate a life well lived, success in private and public life and perhaps to anticipate a comfortable retirement. On one level, we can say that at 60 the universal declaration and the system that it has established—which Professor Shearer has set out—has been extremely successful. All states in the world have ratified at least one of the core nine human rights treaties and 80 per cent of the countries in the world have ratified four or more. That is a pretty good record. The universal declaration is the basis of constitutional rights guarantees in 90 countries.

But we can also say that, despite its age, the universal declaration remains a radical and controversial document—somewhat like a hippie who is now having their 60th birthday. There is something very edgy about it. What I want to focus on is one of the many controversies that have dogged the universal declaration since its adoption: can it claim universal applicability in a world marked by religious, cultural and civilisational differences?

Professor Shearer has already addressed the question of the change in nomenclature. The universal declaration began its life as the international declaration, and it changed its name to the universal declaration very deliberately, to assert that it was something that would cover all circumstances, all cultures and so on. Also, as Professor Shearer has mentioned, the critical drafters of the universal declaration came from a wide variety of backgrounds. Eleanor Roosevelt, obviously, was the person who brought it all together but there were Chinese philosophers, Lebanese experts, South Americans and Indians involved in it.

Despite the broad range of backgrounds of the drafters, some of the participants later in the adoption of the universal declaration argued that it was essentially a set of Western values. For example, Saudi Arabia, which was one of the countries abstaining from the universal declaration, strongly resisted the reference to the equality of the rights of men and women in relation to marriage, which you will find in article 16 of the declaration. The Saudis also strongly rejected the right to change one's religion, found in article 18 of the declaration. Jamil Baroody was a fascinating character; he was the Saudi delegate in the UN's Third Committee when the universal declaration came through to be debated. He accused the drafters of 'considering only the standards recognised by Western civilisation and ignoring more ancient civilisations which were past the experimental stage, and the institutions of which—for example, marriage—had proved their wisdom throughout the centuries.' That was Jamil Baroody attacking the universal declaration for being a set of Western values.

It is striking that, of the other countries that abstained—Saudi Arabia was one, and six Soviet bloc countries also abstained—their abstentions were based to a certain extent on an interpretation of national cultures. They viewed the declaration as flawed on the grounds that it

did not apply to their societies, where ‘the state and the individual were in harmony with one another and their interests coincided.’ That is the reason the Soviets felt no need of it. The final abstainer was South Africa, and it also based its abstention on cultural grounds, saying the universal declaration would be quite incompatible with a society that was trying to further the cause of its native population by excluding them from development with the white population.

We have, right from the very beginning of the universal declaration, this strain of argument that it is simply a Western construct. That argument has revived over the years, and we saw a real flowering of that type of argument during the 1993 World Conference on Human Rights held in Vienna. There were a number of governments, particularly in our region—Malaysia was very strong among them, as was Singapore—saying, ‘Why pay attention to the universal declaration, because it is really a new form of imperialism?’ During the Vienna conference, the Chinese delegate said something rather pointedly in his speech: ‘The concept of human rights is closely associated with specific social, political and economic conditions and the specific history, culture and values of a particular country.’ He did not go on to say which country, but it does not take too much imagination to guess which one he had in mind.

We had that back in 1993, but then I noted that, in 2005, at the world summit held to celebrate the 60th anniversary of the UN, the statement that came out of that gave a much more robust endorsement of the universal declaration, saying that ‘the universal nature of its rights and freedoms is beyond question.’ These currents are interchanging, one occasionally more dominant than the other. But I want to turn to a more recent example of this type of debate which occurred just last year in the UN Human Rights Council that Professor Shearer has mentioned—the successor to the UN Commission on Human Rights. In 2006, the Human Rights Council adopted a resolution introduced by Pakistan entitled ‘Combating defamation of religions’.

The vote in the Human Rights Council was quite interesting. The vote was 24 states in favour to 14 against while nine states abstained. The resolution expressed ‘deep concern at attempts to identify Islam with terrorism, violence and human rights violations.’ The resolution went on to urge states to take resolute action to ‘prohibit the dissemination of racist and xenophobic ideas that constitute incitement to racial and religious hatred, hostility or violence’. The resolution also went on to invite the Human Rights Council’s Special Rapporteur on contemporary forms of racism to report on what were called ‘all manifestations of defamation of religions and in particular on the serious implications of Islamophobia on the enjoyment of all rights’.

The Organisation of the Islamic Conference, which is a group of Islamic countries, presented the religious defamation issues squarely as one of Western rights versus Islamic values. Certainly, if one studies the voting pattern in the Human Rights Council—and not all countries at the UN are represented in the council—this gave some support for the Islamic Conference argument because all the Islamic states on the council voted for the resolution and all Western states voted against it. But the voting pattern picture is made a bit more complex by the fact that Cuba, Mexico, the Philippines, Russia, South Africa and Sri Lanka supported the resolution while Guatemala, Japan, Korea and the Ukraine opposed it. The abstentions, again, were interesting. They included some Latin American countries, some African states and India. So, even though we can see all Islamic states supported it, the geographical distribution presents a more mixed level of support and opposition.

During the council's debate on the resolution, some countries argued that while they oppose the defamation of religion generally, the great emphasis on Islam in the resolution made it unbalanced. Other countries pointed out that the resolution was in tension with the existing protections of freedom of thought, belief, opinion and expression that are contained in the universal declaration and also in the treaty translation of the universal declaration, the International Covenant on Civil and Political Rights. Some other countries were very concerned by the lack of criteria to determine when freedom of speech crossed over into unacceptable religious defamation.

For me, this resolution on religious defamation is a really troubling development. For a start, we already have a prohibition on any advocacy of national, racial or religious hatred in the civil and political covenant. International human rights standards accept the possibility of limitations on the freedom of opinion and expression—for example, to protect public order or health—but it seems to me that it is not clear why religions should be protected against criticism. It is also true that one can understand some of the reasons for this resolution to be put forward. It is clear that there has been inadequate attention given to understanding Islam in the West and there is widespread misrepresentation of its spiritual teachings in popular discourse. But to me, the resolution is problematic—it provides a very crude solution to those problems. By implying that countries have a duty to prevent criticisms of and debates about religions, particularly Islam, the resolution seems more intent on protecting religious ideas than the rights of individuals to religious freedom.

These sorts of objections that I have made to the resolution cannot be understood as a simple assertion of Western ideas of rights against Islamic values. Firstly, these ideas were articulated in the Human Rights Council by both Western and non-Western countries. Secondly, there are critical traditions within Islam that support discussion and debate on its precepts. These traditions go right back to the great Islamic philosophers of the Middle Ages. Arguments that international human rights standards impose a false universality on different cultures are usually associated with the non-Western world, so I have given you an example of where that is the case. I think we have also got to remember that attacks on the universality of human rights are also common in the West, although they are not usually pitched in these terms.

Western governments regularly find international human rights standards as irksome and confronting as non-Western governments. For example, human rights principles have only made limited inroads on the histories of race and sex discrimination on which our societies have been built. Another area in which many countries have resisted human rights norms is that of migration. I think the conduct of the so-called war on terror in particular has led Western governments to resist the universal application of the universal declaration. Indeed, across the globe in the post September 11 era, we have seen the law attempting to reduce the threat of terrorism. These rules are premised upon the existence of a warlike situation, the idea that we are vulnerable to outside forces and to take tough measures is necessary for the prosecution of the war. A local example of such law is the 2005 amendments to the Commonwealth Criminal Code which were enacted in the wake of the London bombings. These amendments, as many of you will be aware, introduced preventative detention orders, control orders and expanded the definition of sedition to cover, for example, speech that urges assistance for countries fighting against Australia—even if Australia has acted illegally in invading another country.

Many lawyers and experts have pointed out that these provisions are typically unnecessary, disproportionate or too vague to be implemented correctly by enforcement agencies. But I am more interested in the human rights questions that these laws raise. It seems to me that both preventative detention and control orders are mechanisms that are inconsistent with the rule of law and with human rights principles such as the right to a fair trial and the right not to arbitrarily detained. The sedition provisions enacted after 2005 are inconsistent with the international guarantees of freedom of speech.

A professor of human rights at the London School of Economics, Conor Gearty, who visited us here in Australia last year, argued in his Oxford Amnesty lectures that the war against terrorism is built on a division of the world into good and evil camps. The idea of human rights developed over the last 60 years since the adoption of the universal declaration is that human rights attach to every person, regardless of whether we label them good or bad. It seems to me that the new wave of anti-terror laws undermine this development and undermine the real force of the universal declaration by establishing categories of people who are unable to claim the full protection of basic rights because they have been tarred with the term ‘terrorist’ or ‘suspected terrorist’. Gearty has pointed out:

The moment the human rights discourse moves into the realm of good and evil is the moment when it has fatally compromised its integrity. For once these grand terms are deployed in the discussion, all bets are off as far as equality of esteem is concerned. If we are good and they are bad, then of course equality of esteem as between all of us is ludicrous. ... These are not now any longer human beings *simpliciter* but different kinds of humans: one good, one bad.

So we can see that the universality of human rights remains controversial 60 years after the adoption of the Universal Declaration of Human Rights. Governments, whatever their particular character, will stake out areas where talk of human rights becomes suspect. I think that the word ‘culture’ becomes an omnibus category for the areas governments want to preserve from scrutiny. In the post September 11 world, the language of culture morphs into the language of exception and crisis.

To conclude, what is the future of the universal declaration? I think that the Universal Declaration of Human Rights, like any 60-year-old, dare I say, is showing signs of age. Certainly, if you pick up a copy of it and read it, you can see that it contains some quite outdated language. For example, there is talk of brotherhood when we might expect talk of humanity. It certainly also does not explicitly address the human rights of groups we now understand to be marginalised in most societies—for example, the rights of people with a disability or the rights of Indigenous peoples. These of course have been taken up in later instruments, but they are not referred to in the universal declaration.

But, at the same time as showing a few creaky joints and a few grey hairs, I think the universal declaration still is a youthfully radical document. It is very difficult—and Ivan Shearer has said this—to imagine that the economically drafted text of the 30 articles of the universal declaration could emerge from a 21st century UN process. Indeed, a couple of years ago, I gave a group of clever law students this exercise: to redraft the universal declaration. After four hours we had got to a 20-page, single-spaced document. I think that today the formulation of the rights contained in the universal declaration would be much more qualified. We would not have those ringing phrases that you can read. The language would be hedged by the language of exception and

special circumstances—definitions of categories of people who do not quite deserve the full catalogue of human rights.

So my argument today on this anniversary is that we should try and hold on to the idea of universalism in the human rights area and resist attempts from all sides to water it down. Universal principles, I think, can accommodate pluralism and cultural diversity but maintain a central ideal. The idea of universal of human rights is valuable also if it makes us scrutinise opposing claims of culture carefully. Whenever culture-like exceptions are proposed to human rights norms, such as religion, the war on terror or illegal immigrants, we should ask: ‘Whose culture is at stake, who are the interpreters of the culture and what is the political agenda behind the claim to culture?’

It does not make a lot of sense to understand universality as somehow pitted against particularity, because universal human rights standards only make sense in particular contexts. They always have to be translated. This is recognised in the very broad unprogrammatic language of the universal declaration. It could not be enacted just like that into law; it needs domestic translation. But attention to particularity and particular context does not mean lapsing into relativity. Rather it means accepting the statements of universal human rights norms as a beginning, not an end, of a conversation about the right course of action in particular circumstances.

Earlier this year, the *Irish Times* commissioned a number of Irish writers to publish reflections on the universal declaration. You can get them on the web and they are a beautiful series of reflections. I was really drawn to the reflection by Seamus Heaney, the Nobel-prize-winning Irish poet. I just want to finish with some of Seamus Heaney’s words because as a poet—even though he is writing prose—he sums up these ideas much better than a legal academic could ever do. He said that the universal declaration:

... is always there as a means of highlighting abuse if not always as a remedy: it exists instead in the moral imagination as an equivalent of the gold standard in the monetary system—

he may not say that today, but he said it on 15 March!—

Even if its Articles are ignored or flouted—in many cases by governments who have signed up to them—it provides a worldwide amplification system for “the still, small voice”.

He went on to say in his reflection:

... the boldness and buoyancy of these words ... gestures so confidently towards what human beings desire that it fortifies a conviction that the desirable can in fact be realised.

Surely, I think, this is the great force of the universal declaration. It is not able to prevent the abuse of human rights everywhere, but it does offer a set of transcendent human commitments that can be used by us all to address imbalances of resources and maintain equilibrium of power in our particular communities.

Sixty years after the adoption of the universal declaration, the challenge for us in Australia is to make the commitments of the universal declaration part of our culture and our law. I venture to suggest that a national bill of rights would be a very important step in this direction.

SUBCOMMITTEE CHAIR (Ms Rea)—Thank you very much, Professor Charlesworth. We have got quite a good patch of time left to have some discussion and questions. When you ask a question, please let us know your name and if you are here representing an organisation.

Mr Shibli—My name is Jamil Shibli, and I represent Justice in Government, a community advocacy organisation trying to help common Australian people who are having problems with the justice system and suffering at the hands of the government bureaucracy. I would like to ask about articles 5 and 6 which may or may not be enacted into law and the conditions in the articles about cruel treatment or punishment and the recognition of a person before the law.

I see in the Family Court and the Federal Magistrates Court the judiciary constantly discriminating against parents in children's custody issues. In most of the cases, male parents are deprived of custody of the children. In this way, we see that millions of Australian fathers are not seeing their children or are not having custody of or contact with the children. So these are the new stolen generations created by the judicial system. There were the stolen generations in the Australian Indigenous community groups for the last 220 years. This is ending, but the new stolen generations are happening due to violation of these articles. So I ask the professors and the concerned prominent Australians: what are you going to do about it? Thanks.

Prof. Shearer—The questioner has drawn attention to a provision that says everyone is to be regarded as a person before the law. What does that actually mean? Some people have tried to read into it a lot of things which, perhaps, do not actually belong there. It is not a general justice provision. I take it that the speaker was talking about discrimination, injustice and so on in the systems, but you have to look at that provision in the light of the recent experience of the Second World War, where people were deprived, on the grounds of their race or nationality, of any rights before the courts and where there was a depersonalisation. For example, I recall reading that when Jews were being shipped off for so-called resettlement in the east, on the railway carriages it referred to so many 'kopf'—so many head—or 'stueck'. They were treated as cattle, not as people. It was a reaction to that kind of thing that was intended. I do not think one can build much more on that. The Human Rights Committee, I know, has had a number of complaints based upon that concept of being denied recognition as a person before the law, but in effect it has said, 'No, you can't; you have to point to some more specific right than that.' I think the speaker also referred to discrimination. Of course, there is a huge amount of jurisprudence on that under article 26 of the covenant and so on. Thank you.

SUBCOMMITTEE CHAIR—I suggest in the interests of time that, while this is a very interesting issue that requires a lot of detail, if we could keep questions fairly short then everybody would have more of a chance.

Mr O'Callaghan—Hello. I am Paul O'Callaghan from the Australian Council for International Development. Thank you very much for those excellent presentations. Professor Charlesworth, I wonder if you could just make a comment on what we think of as a more positive development in terms of recognition of the rights of citizens in respect of the state in the gradual emergence of the responsibility to protect principle. I recognise that it does not have any

formal status at this stage, but I would just like your reflection on whether, in some ways, the recent endorsement of that through the United Nations and, if you like, the trend of where that seems to be going might give us some further comfort, in contrast to the examples you gave earlier.

Prof. Charlesworth—Thanks, Paul. Many people here will probably know a little bit about the responsibility to protect. This is a doctrine, I guess, very much associated with Gareth Evans, our own former Australian Minister for Foreign Affairs, who has argued in a series of commissions that we should not allow sovereignty to be the final stage in an argument. Let us take, for example, a case that has been in the news over the weekend, Zimbabwe. The idea is: what can the international community do about Zimbabwe? Robert Mugabe simply says, ‘What’s going on here is a question of my sovereignty.’ You might have seen that he rejected the visit of Jimmy Carter, Kofi Annan and Graca Machel at the weekend, saying, ‘They simply cannot come in and tell us what to do.’ The doctrine of responsibility to protect has been developed initially in response to the UN’s failure to endorse action in Kosovo in 1999. The idea is that we should not understand countries as having absolute sovereignty; we should understand it almost as a conditional form of sovereignty that involves a responsibility to protect their own people. This doctrine—I am sure there will be many PhDs written on it, because it is a fascinating area—has been developed over a number of years. It was endorsed—in watered-down form, of course—in the 2005 World Summit doctrine. The idea is that countries have to protect the people within them or else, I guess, the cutting edge is that international intervention will be justified.

I agree with you, Paul, that it is a very interesting development. I must admit I am a responsibility-to-protect sceptic, however. I am sorry to be just standing here and sounding sceptical about these issues. I have recently just finished Gareth Evans’s book, which is called *The Responsibility to Protect* and has just been published—it is a really interesting book. What I found most interesting about *The Responsibility to Protect* was the aspect of it that emphasises the need for countries and the international community to work to prevent disasters, crimes against humanity, within countries. It seems to me that is a very strong and important part of it.

What does worry me is—as one American commentator has said—the idea of sovereignty that says ‘abuse it and lose it’. There is this sense that one of the major concerns about responsibility to protect in the international community is who makes a decision that you have not fulfilled all the requirements of sovereignty adequately. The concern, of course, in the international community is that coalitions of the willing, such as the coalition of the willing that was put together to invade Iraq in 2003—in other words, if you like, an internationally private form of justice—might be there to implement the responsibility to protect. So I think it is an interesting idea and worth exploring, but I think there are some problems with its current formulation. The way ahead, I think, is really to work on prevention, and, in that sense, tying it to the Millennium Development Goals is quite significant. I was very pleased to see that our Prime Minister—in Lima, I think—over the weekend made a recommitment to Millennium Development Goals. It seems to me that is a very, very positive development.

Mr Withford—Thank you very much for two very interesting presentations. My question relates to the bill of rights debate that is currently happening in Australia. I hear a number of different claims about how far we are lagging behind. Some people say we are the only developed country without a bill of rights. Some people say we are the only Western country

without one. I have even heard that we are the only democracy without a bill of rights. My question is: how far behind are we, and what is the benchmark that is being used? Are we talking about codification of the civil and political rights covenant, or something broader or narrower?

Prof. Shearer—I have not done a head count, but I do not think we are the only advanced or Western country without a bill of rights; we are one of the few without one. At Australia's last appearance before the human rights committee, I think it was about seven or eight years ago, the committee did call upon Australia to consider implementing the covenant in the form of national legislation—a bill of rights or whatever. But it did not say that it must, because it has been said, on that occasion and on other occasions, that it is not the only way in which the human rights provisions of the covenant can be realised. But it is the most desirable way, in the sense that it gives visible form and enables individuals—and I think this is the really important point in the mind of the human rights committee—to invoke the provisions of the covenant via national legislation whether in representations to the executive or to plead them in the courts. So that is why.

I made the point that I did not want to see the wording of any bill of rights, and I am pleased to see in the Victorian and ACT legislation that they have kept very close to the wording of the covenant and the universal declaration. Of course, it can be accompanied with all sorts of machinery provisions such as advisory committees and so on, and also process provisions, whereby, for example, every bill that comes before parliament must be accompanied by a declaration of compatibility: 'Is this compatible with Australia's human rights obligations et cetera?' There is also the possibility of derogation and so on. You have got to build those things into it. I think the answer to your question is that we are one of the few that have not legislated, but I expect that we will shortly be changing that. The cynics might say: 'Look at all those countries that have wonderful bills of rights in their governments. Zimbabwe, for example, has a beautiful constitution, a beautiful set of rights.'

Mr Gillespie—I am from the Aboriginal Legal Rights Movement in South Australia. I wonder if either of you have comment with regard to something that is troubling our organisation. We are funded for legal aid by the Attorney-General's Department; however, we are funded in 1996 dollars. In other words, our funding has not increased. Yet mainstream funding from the same department has increased over 120 per cent. In my mind, that seems to be in breach of article 1. Also, the joint committee chairperson may wish to take this particular issue up as well. My organisation has lodged a formal complaint against the Rudd government with regard to article 2 of ICERD, which is the International Convention on the Elimination of All Forms of Racial Discrimination, which I understand Hilary is familiar with.

Prof. Charlesworth—There have been some complaints—I do not know if Ivan, in his work on the Human Rights Committee, has encountered them—about levels of legal aid in different contexts. I have certainly read about those. To sustain the claim of discrimination, one has to present all the background and facts; but, on the face of it, if there are different levels of funding for legal aid without an adequate, plausible explanation, it seems to me that the international treaty bodies may well find that a discriminatory action. It obviously depends on both the type of evidence that is adduced to support that and also the type of justification that is given by the country concerned. It prima facie raises an issue. It depends on the exact case that has been put. I am not aware of how the government has explained the differential funding. That is probably as far as I can take it unless Ivan has some more experience to draw on.

Prof. Shearer—I do not have anything very specific to add to that. You make a point—you could make it about any right. Article 14 of the covenant refers to the right of a person to have legal aid where they cannot afford counsel—in serious cases. There are some ifs and buts, but it would be a legitimate point of criticism when Australia or any other country comes before the Human Rights Committee that they are not funding it sufficiently. A constant theme of the Human Rights Committee is that rights must not be there in theory but actually there in reality, that they must be implemented in a way which makes them effective rights. You would have an argument that, by reason of the absence of a sufficient level of funding, the right has not been made effective—not that it is not there but that it is not effective.

That is a matter of appreciation. I think, whether you were talking about the Human Rights Committee, the Committee on the Elimination of Racial Discrimination or any of the other monitoring or enforcement bodies of the United Nations, they would all admit that they are not in a good position to decide on the allocation of government funds. That is not what committees should be about. They would simply be able to urge in general terms that the level of funding be sufficient to make the right effective. That is all one can say.

Ms Scrine—I wanted to thank both the speakers for putting freedom of religion and belief on the table, because it is obviously a right that affects so many of the international situations that we are facing at the moment. Given that the Organisation of the Islamic Conference has become so clever and successful in using the United Nations to cut back the freedoms under article 18, what are the options for states and other parties that are sincerely trying to promote that right? How do these things balance out when we have resolutions that, in effect, quite severely restrict freedom of religion and belief and yet article 18 of the UDHR spells it out very clearly? What takes precedence at the end of the day? I have a subsidiary question. My understanding is that each iteration of that right has watered down a little bit the right to change one's belief—the covenant has slightly milder wording and the declaration cuts it back even further. Does that mean that the UDHR is less effective and these other iterations take precedence, or is there still a customary law basis from the UDHR?

Prof. Charlesworth—Thank you for that question. I think that, from a legal perspective, the fact that the resolution adopted by the UN Human Rights Council, even though it passed with 24 votes, was so contentious means that at the end of the day it does not have a great deal of significance precisely because it was so contested. What the human rights council was able to do, though, was get the special rapporteur to focus on a particular set of issues at the expense of other ones. That was the real concern of countries. Australia is not a member of the human rights council. The human rights council, as Professor Shearer has already mentioned, is a very criticised body—the United States has famously declined to participate in its work, because it sees it as very problematic and basically controlled not by the West, which is quite used to controlling a lot of these things. It may be that its work has much less status than other bodies that have garnered more respect and are seen to be more independent, but I think it is something where one has to encourage countries to keep raising these issues.

Regarding the universal declaration, while not every country is a party to the civil and political covenant, no country has yet denounced the universal declaration. In a sense, that is why its guarantees are of particular moral and legal importance—I agree with everything Ivan Shearer has said. It is because they are so unqualified. One can keep going back to them as the standard. The translation of them into the covenants was precisely because they were going to be given

full legal status. You do see a translation in a much more hedged way. This is not just an issue with respect to Islam; we have seen this with respect to a great number of religions. There are some very curious alliances that develop at a number of conferences between religions who are very keen to keep their religion free from scrutiny.

In the context of Australia, to draw in the other question, the context of an Australian bill of rights, we can see in the media and in the press a number of churches, including particularly the Catholic Church in the person of Cardinal Pell that have come out very strikingly and spoken very strongly against any bill of rights. One has to start asking why religions are so anxious about human rights scrutiny. What is it about it that makes them so concerned? I think that is where we have to start arguing that religions do not have special status. The church argued very successfully for exemptions from the Sex Discrimination Act when that was adopted. I am quite concerned. If we do get a discussion about a national bill of rights—which I fervently hope will happen—we really have to be very careful about accepting religious views of human rights without really questioning their bases.

Prof. Shearer—It always happens in the United Nations and other bodies that one talks about balance. There is great defensiveness by many of the Islamic countries about the consequences. It is not perhaps inherent Islam but national legislations or cultures that are Islamic that say that, if you purport to or try to change your religion, you are guilty of apostasy and you can be stoned or have all sorts of things happen to you. As Zafrullah Khan said back in 1948, that is not essential or part of good Islamic culture. I just wanted to add a personal reminiscence. I was sitting on the human rights committee when Yemen was presenting its periodic report. We put this to them: is it not a fact that in your country apostasy carries the death penalty? They said: ‘Yes, that is true, but people are never punished under that because nobody in their right mind would want to change their religion. So it is not really an issue for us. It just does not happen.’ That is the way it was pushed aside. As Hilary has said, it will be continue to be pushed aside in this constant search for balance. ‘Oh well, you can’t keep picking on us. What about is happening in the Western countries, where they attack and invade other countries. Shouldn’t we be talking about that as well?’ That is the rather messy context in which these issues, I am afraid, have become clouded, and they carry on at the moment.

Mr Farmer—I am the federal member for Macarthur. First of all, I want to thank everybody who has put this together. I think it is an excellent forum to further progress this discussion. Something that Australia certainly needs to have is discussion around human rights.

Secondly, and most importantly, I would like to ask a question. Sixty years on, is this declaration worth the paper it is written on? Let me draw your attention to three articles in there just at a glance. Firstly, article 5 is in relation to human rights, torture and cruelty. We see on the news on a daily basis these things happening right around the world and occurring on a regular basis. Governments, for all sorts of reasons, are pushing their concerns in relation to justifying those things. Secondly, article 16 is in relation to the family, religion and the right to be able to raise a family and have children. You mentioned earlier on about the Catholic Church here in Australia. It seems to me that the opportunity for humans, whether they are homosexuals or not, to be able to have children and raise a family flies in the face of many religions throughout the world. That straight away runs into conflict. Thirdly, of course, is within our own perimeters of political parties: article 20(2) states that no human being should be forced to be part of an

association. We talk about voluntary unionism for students and people have to be part of a union to be part of basic political affiliation here in this country.

I congratulate everybody for putting this on. I think these are all questions that need to be regarded and looked at. It is something that we need to address, but I would like to just draw you back to my original statement: 60 years on, is this thing worth the paper that it is printed on?

Prof. Charlesworth—It is a good question to end on, although it may not be the last question. I have been trying to make the argument that, yes, it is worth the paper it is written on. Of course one can very easily by picking up this morning's paper identify a number of violations of the universal declaration. We think of torture. We think of Guantanamo Bay, Zimbabwe and Burma—places that are very much in the news. To think that a declaration like this could stop those abuses was never its point.

If you just think of our own national laws, we have laws against murder, rape and domestic violence; yet, as we know, they are constantly breached. The mere fact that we have a law and that it is not being lived up to is, I must say, as a teacher of law students, not surprising. We know that laws are inadequately enforced, impossible to enforce and so on. There will always be breaches of it. I do not think that looking at the breaches, I would respectfully suggest, is the test of a document like this. I think what it does is to hold up in a very clear and lucid way a set of basic human commitments. It is simply saying: these are the standards to which we aspire. There is an implicit acknowledgement that we will not always get there, but it then gives us a basis to actually measure things and to say, 'Well, if a government is committed to the universal declaration, it should not be having detention centres in which we have evidence that torture is being practiced.' It gives you, I guess, a leverage point to call governments to account. I think if we are hoping for complete consistency with the universal declaration we will always be disappointed. We have to hold on to its optimistic aspirations and use it as something to keep reminding governments, 'This is what you have promised to live up to.' That would be my quick answer to your question.

Prof. Shearer—I will just add one final word. I agree with everything that Hilary has said. It is often said: 'There are so many breaches; is there any point in pretending that this document is worth anything? Wouldn't we be better off just throwing it out?' No, we would not—for all of the reasons that Hilary has given. Can I just give you one anecdote from my experience on the human rights committee. We had a country from the former Soviet Union—I think it was the Ukraine. Anyway, it was one of the countries that have come out of a period of totalitarianism, repression and so on. It was the ombudsman of that country who addressed the committee. She said: 'I know that not everything in my country is good. We are having to battle attitudes inherited from the past,' and so on. But she said: 'However you judge us on our performance, please be assured that we are trying our best—or at least I am trying my best. But I had to put this report together, and I had to coordinate getting together all of the relevant government departments. For the first time, we as a government—or we as civil servants serving the government—had to look at all the good and the bad things that were happening in our country.' She said that the outcome of that—having to face up to and identify the problems and measure the country's performance against their professed obligations under human rights instruments—was alone worth all the trouble. I think that is a very important point to bear in mind.

It is also important to bear in mind the many NGOs and human rights workers throughout the world who get a knock on the door from the security police at four in the morning and who are sitting in their cells. They can be sure that, if what they are doing is in accordance with human rights standards, they are there for a good reason. It is just not their personal opinion about it. These are standards and they have to be observed.

CHAIR—I am just going to take the chair's prerogative. I was just thinking that, as that last question was asked by Pat Farmer, that I could probably ask the same question about the Ten Commandments or the Sermon on the Mount. They are some of the greatest words that have ever been written, but are they worth the paper they are written on? I think lots of people would say they are—whether or not they are actually carried out to the full. I will now ask Kerry to formally thank our guests and thank you all for coming.

SUBCOMMITTEE CHAIR—Thank you, Michael. I apologise that we have run out of time. Unfortunately, everybody has other things to do, so we will have to draw it to a close there. In doing so, I once again thank our two guest speakers for coming along and giving us some very insightful perspectives on the past, the present and the future of the declaration. I certainly found both of the presentations very informative, and I thank them for that. Can I thank all of you, the audience, for coming along today as well. In a completely different context, we often hear the phrase—and I will probably misquote it—that 'the price of freedom is eternal vigilance'. Whilst it might often be referred to military terms, I think that for all of us in this room it is in fact about making sure that we continue to discuss human rights and ensuring that, as a democracy, we do not become complacent either here at home or elsewhere in the world. That is why the committee felt that a discussion such as this was a very important way of commemorating and acknowledging the 60th anniversary. We must make sure that discussions like this continue forever, because once they stop we will lose our human rights. Thank you very much for coming.

Committee adjourned at 11.05 am