

HUMAN RIGHTS AND DECOLONISATION

*Alison Quentin-Baxter**

Of the next three papers in this section, the first two were written by Professor R Q Quentin-Baxter and the third by his wife, Alison. They reveal insights and a sense of immediacy which the authors derived from their personal involvement in two areas of national and international decision-making: the international implementation of human rights and the transformation of Niue from its former position as a colony to its present status as a self-governing state in a relationship of free association with New Zealand.

Professor R Q Quentin-Baxter was appointed to the Chair of Jurisprudence and Constitutional Law at the end of 1968, and held that position until his sudden death in September 1984. At the time of his appointment he was an Assistant Secretary in the then Department of External Affairs. In 1966, he had been appointed as the New Zealand representative on the United Nations Human Right Commission and continued in that role after his move to the University, serving for a one year term as the Commission's Chairman. His paper 'The United Nations Human Rights Commission and the Search for Measures of Implementation' was written in 1968, probably for presentation at a meeting of the Bar Association of the City of New York.

In it, Professor Quentin-Baxter explains the dynamics of the initiative taken by the Human Rights Commission in 1967 to seek a revision of the constraints which it had itself, since its

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inception, placed on its authority to take action on complaints against states. The Commission proposed the preliminary screening of complaints appearing to reveal a consistent pattern of gross violations of human rights, quiet negotiation with the state concerned, and publicity only as a last resort. This procedure was approved by the Economic and Social Council in 1970 (Resolution 1503(XLVIII)) and remains one of those through which the Human Rights Commission seeks to ensure the compliance by states with international human rights standards.

Professor Quentin-Baxter thought that another Human Rights Commission initiative he described - the appointment of a United Nations High Commissioner for Human Rights - would take longer to come to fruition. The office was eventually established by the United Nations General Assembly in 1993 (Resolution 48/141).

Despite these and other achievements, the daily headlines about Kosovo, East Timor and other places where there continues to be a consistent pattern of gross violations of human rights demonstrate that the international implementation of human rights still poses grave problems for the international community. Professor Quentin-Baxter recognised the likelihood of that reality, but concluded that there would still be value in cleaving to the doctrine of human rights at whatever level of achievement proved attainable.

The theme of the other two papers in this section also has a continuing relevance. The diminishing population of the tiny island of Niue is struggling to maintain its existence as a community. In 1970, Professor Quentin-Baxter was appointed as constitutional adviser to the Niue Island Assembly. Unlike the people of the Cook Islands, those of the less prosperous island of Niue had, until then, refused even to discuss the possibility of self-government, fearing the loss of the substantial support they were receiving from the New Zealand Government.

After extensive consultations with the Niue Island Assembly and the people themselves, Professor Quentin-Baxter was able to reassure them, in his first report, that they could move to self-government without losing either their New Zealand citizenship or their ongoing economic assistance. The New Zealand Parliament acted on his recommendation that the Niue Act 1966 should be amended so that, before exercising their right of self-determination, the people of Niue could try out for themselves their proposed institutions for self-government.

By late 1973, Niue was ready to contemplate becoming a self-governing state in a relationship of free association with New Zealand. Professor Quentin-Baxter's second report to the Niue Island Assembly outlined the features of the new constitutional arrangements as they had emerged from a further round of consultations. The main elements of the relationship would need to be included in a Niue Constitution Act. This 'would, in effect, constitute a directive from

the New Zealand Parliament to present and future New Zealand Governments'. He also described the main features of the accompanying Constitution.

The writing of Professor Quentin-Baxter's second report in 1974 was interrupted by the other demands on his time during a year's leave from the University, spent mainly in Geneva. He led the New Zealand delegation to the first session of the Diplomatic Conference on International Humanitarian Law, attended the annual session of the International Law Commission of which he was a member, and acted as Agent for New Zealand in the jurisdiction and admissibility phase of the *Nuclear Tests Case (New Zealand v France)* in the International Court of Justice, as well as taking the leading part in drafting the Niue Constitution itself.

That task had to take priority over the completion of the second report. The thrust of the 26 paragraphs already written, supplemented by a telegraphed message, was fully reflected in the Niue Constitution Act 1974 and the accompanying Constitution. In the presence of United Nations observers, the people of Niue, in an act of self-determination, approved the Act and Constitution in a referendum held on 3 September 1974. The two instruments came into force on 19 October 1974.

Alison Quentin-Baxter was a Lecturer in the Law Faculty of Victoria University from the beginning of 1967 until the end of 1969. Like her husband, she was a former member of the Department of External Affairs. She accompanied her husband on his first visit to Niue in 1970 and on that preceding the preparation of the Niue Constitution, an instrument which she helped to draft.

In 1985, a Review Group was set up to examine the working of the relationship of free association between Niue and New Zealand. Each Government appointed three members. Alison Quentin-Baxter was among those appointed by the Government of Niue. At the Review Group's request, she wrote a paper on Niue's relationship of free association with New Zealand. It reiterated what had been a main theme of her husband's second report: the reality that the open door to New Zealand had allowed Niueans to make a significant contribution to the New Zealand economy, but risked draining Niue itself of a skilled workforce unless the standard of living on the island was reasonably comparable with that on the mainland. The provision of the 'necessary' economic assistance promised by the Government of New Zealand needed to be based on this reality.

The Review Group recommended, and both the Government of New Zealand and the Government of Niue accepted, that their "shared and paramount policy objective should be the maintenance of a living community in Niue". To this end the main purpose of New Zealand's

economic assistance was not the promotion of "economic self-reliance" but "the improvement of the standard of living of the Niuean people".