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## Phillips' brief

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### UNITED NATIONS SEMINAR ON THE ROLE OF POLICE IN THE PROTECTION OF HUMAN RIGHTS, CANBERRA 1963

Post-war international human rights initiatives reached policing only slowly. In spite of this, the 1963 United Nations (UN) Seminar on the Role of Police in the Protection of Human Rights was held in Canberra long before the establishment of law reform commissions and an Australian Human Rights Commission. The title of the seminar was instructive more than defensive, pointing to the positive role that police might play in protecting rights.

Yet for some, especially legal figures like Sir John Barry, judge of the Victorian Supreme Court and an erstwhile President of the Australian Council for Civil Liberties, the opportunity was lost on the police. As he told his colleague, academic lawyer Norval Morris: "The UN Seminar on Police and Human Rights at Canberra was frightening in its revelation that the police attitude is the same everywhere, and is endurable only if carefully watched and held in check."<sup>1</sup>

One reason for Barry's reaction was the hostile response of police to a paper on the protection of the rights of Australian Aborigines, delivered by the Australian Shirley Andrews, who was representing the Anti-Slavery Society for the Protection of Human Rights. Andrews highlighted the discrimination experienced by Australian Aborigines in their interaction with police and the criminal justice system.<sup>2</sup> Her intervention prompted the adjournment of regular proceedings while the Australian police took time out to deny her allegations of discrimination.<sup>3</sup>

Andrews' intervention was not the only Australian provocation. Barry himself drew attention when he challenged police practices in dealing with suspects to obtain confessions. The London *Times* reported his view "that confession was the most attractive way of solving crimes. Getting one should be recognized as a genuine temptation".<sup>4</sup>

The 1963 Seminar was one of a series organised as part of the UN program of "advisory services in human rights". The key figure in organising these seminars was the Canadian Dr John Humphrey, founding Director of the United Nations Division of Human Rights, and generally recognised as a key figure in the drafting and adoption of the Universal Declaration of Human Rights. The editor of Humphrey's published diaries has noted that the United Nations human rights program did not enjoy the strong support of UN Secretary-General Dag Hammarskjöld ("active dislike"), nor Hammarskjöld's successor U Thant ("not much interest").

In the face of this lack of support, Humphrey's Division developed a program of international and regional seminars on a variety of human rights issues that were held in many different countries.<sup>5</sup> Prior to the Canberra seminar, three seminars had been held in countries within the geographical scope of the Economic Commission for Asia and the Far East (ECAFE). ECAFE, established in 1947 as a subordinate body to the UN Economic and Social Council, did not include Communist countries. The earlier seminars had been held in 1958 in Baguio (the Philippines), "The protection of human rights in criminal law and procedure"; in 1960 in Tokyo, "The role of substantive criminal law in the protection of human rights, and the purposes and legitimate limits of penal sanctions"; and in 1961 in Wellington, "The protection of human rights in the administration of criminal justice". One of the earliest

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<sup>1</sup> Letter from John Vincent Barry to Norval Morris (27 June 1963) NLA MS 2505/1/7313-4

<sup>2</sup> Andrews S, *Speech Made at UN Seminar on the Role of Police ...* (3 May 1963) NLA MS 2505/48/170-2. For more information on Andrews, see especially Taffe S, "Shirley Andrews: An Architect of the National Aboriginal Civil Rights Movement, 1952-1968", *History Australia* 8, No 2 (2011) pp 153-176; Chesterman J, *Civil Rights: How Indigenous Australians Won Formal Equality* (University of Queensland Press, 2005) pp 68-70.

<sup>3</sup> "Police Denials of 'Victimisation' at UN Seminar", *The Sydney Morning Herald* (14 May 1963) p 4.

<sup>4</sup> *The Times* (London) (2 May 1963) p 9.

<sup>5</sup> Hobbins AJ (ed), *On the Edge of Greatness: The Diaries of John Humphrey, First Director of the United Nations Division of Human Rights, Volume 4, 1958-1966* (McGill University Libraries, Montreal, 2000) pp 1-2.

Australian treatments of human rights issues in criminal law, a paper by Norval Morris published in the *University of Tasmania Law Review* (1958) was prepared in the wake of his attendance at the Baguio conference.<sup>6</sup>

The Canberra seminar opened on 29 April 1963 and continued to 14 May when it approved a final draft report. Delegates and observers from 19 countries and territories included government ministers, police commissioners, academics, judges and lawyers. Some attended as observers from the 22 non-government organisations which were invited. Not all Australian police agencies were represented; overall, serving police officers were in the minority of the participants.

The agenda of the seminar was very wide-ranging – in retrospect perhaps over-ambitious. In consequence the areas of agreement recorded in a report published by the Department of External Affairs were limited, though telling enough: that compulsory finger-printing did not infringe human rights and would be useful as a means of identification, particularly in time of national emergency and disaster; that police should be politically impartial and free from political influence; that police should be given clearly defined and limited discretionary powers; that suspected persons should have the right to legal advice during detention and should be advised of his constitutional rights; and that under no circumstances should force be used to obtain a confession or statement of guilt or implication in a crime.<sup>7</sup>

In spite of his cautious estimate of its prospects at the outset, in his later autobiography John Humphrey was full of praise for the Seminar: “The Canberra seminar was one of the best in the series. The subject, which I had myself suggested, was a good one: the police are sometimes guilty of violating the most fundamental rights, but they also protect human rights.”<sup>8</sup> Other comments on the outcome highlighted the barriers facing any attempts at that time to move police chiefs beyond their defensive lines. The police response to Andrews’ criticism was a symptom of a broader incapacity to open up such discussions to the input of “observers” that is those from outside the ranks of police and government. John Davoren QC, who had attended the seminar as an observer for the International Commission of Jurists, regretted that discussions had simply “concentrated on exchanging ideas on police methods”.<sup>9</sup> Julius Stone also found the police attitude perturbing: “Too much time was spent by police chiefs defending existing national practices, and too little on ways to improve them.”<sup>10</sup>

In retrospect the UN Seminar seems a lost opportunity. Saying so, however, also prompts consideration of why it was so. The failing, if it was one, was not all on the side of police. Research into policing was not even in its infancy; even a figure as progressive as Barry was sceptical about the possibility of including the study of policing as a serious element in Australia’s first criminology program at the University of Melbourne.<sup>11</sup> The institution of which the Seminar was a product, the United Nations, had little institutional weight to exert influence in an area as politically sensitive as domestic policing. The partnerships which the Seminar had occasioned were vulnerable to personal fate and fortune. For example, Selwyn Porter, the Victorian Chief Commissioner of Police, had joined with Professor Zelman Cowen (then Dean of the University of Melbourne Law Faculty) to draft a background paper for the Seminar, but Porter himself died in October 1963. Other key Australian sponsors moved on – Sir Garfield Barwick (Attorney-General) to become Chief Justice and Sir Kenneth Bailey (Solicitor-General) to become High Commissioner in Canada.

Yet it was, above all, the resistance of police to looking at policing, from the outside as it were, that was evident in 1963 and ensured that even within its senior ranks Australian policing remained largely untouched by the policy debates in play at the Canberra seminar. The agenda of Australia’s annual Police Commissioners Conference remained undisturbed by the topic of “human rights” for

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<sup>6</sup> Morris N, “Human Rights and the Criminal Law in South-East Asia” (1958) 1(1) *University of Tasmania Law Review* 68.

<sup>7</sup> *Current Notes on International Affairs*, 34(5) May 1963, p 42.

<sup>8</sup> Humphrey JP, *Human Rights & the United Nations* (1984) p 294; cf *The Times* (London) (30 April 1963) p 10.

<sup>9</sup> New South Wales Bar Association (1963) 6 *Bar Gazette* 3.

<sup>10</sup> Stone J, *Australia Looks to the World: The Police and the People*, Radio broadcast (12 May 1963) NLA MS 2505/37/96.

<sup>11</sup> Finnane M, *JV Barry: A Life* (UNSW Press, 2007) p 248.

another two decades at least. It might be speculated that one result of this shortcoming was the lack of preparedness of Australian policing to cope with the scale of public disorder and protest that developed within just a few years of the Seminar; nor for many years to meet with much degree of sensitivity the challenges posed by the policing of Australia's Indigenous peoples. In this light, the extraordinary and unwelcome intervention of Shirley Andrews in the 1963 proceedings was a particularly poignant moment that continues to demand our historical attention.

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