

Working Group on Indigenous Populations.
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When seeking guidance on the evolution of standards to be recognised within the existing international legal system the Working Group should endeavour to become aware of the fundamental nature of indigenous societies. It is imperative that the standards which emerge through the process of the United Nations have their roots in indigenous soil. If the standards which are eventually recognised are merely a cosmetic shell then they will have no positive effect - rather, the result will be the opposite.

The Working Group must never lose sight of how international law and procedure have developed, especially over the last century - it must not forget the basic norms of humanity which are drawn from natural law.

The Working Group may question the origin of the notion of Land Rights which is being asserted by indigenous peoples. The cultural basis of the norm of the right to land may vary from people to people - its roots are in their essential humanity. It is suggested that a series of common principles can be identified and articulated. The Working Group will need to consider the relationship between these indigenous principles and the body of notions, rights and principles presently recognised as forming the basis of international law and United Nations practice and procedure.

Madam Chair, it is important to note the following: Aboriginal societies existed in a dynamic relationship with the complete environment, developing their religious, legal, social and economic institutions through and around this relationship. Accordingly, it is only for the purposes of analysis that 'land' in the general sense can be separated from the people and their culture - this distinction is an incomplete and misleading abstraction.

Indigenous societies, unlike those societies with systems predisposed to operate on materialist and linear historical premises, did not conceive of, or institutionalise, land as a commodity. Nor did indigenous societies deify material accumulation and exploitation of human and natural resources. Through the use of armed force the exploitative technologies of colonising forces thrust on indigenous peoples' relationship with land a series of new structures, relationships and realities which are inconsistent with the traditional relationships.

In effect, the Working Group is being asked, if it is to be effective, to explore the possibility of reconciling these relationships. Let us for example, look at one aspect of the standards developing in Australia. As you have heard, the Australian State now recognises that Aboriginal peoples were the prior owners and occupiers of the territory of Australia. At the same time, the State of Australia still asserts sovereignty over all the land and populations within the recognised territorial boundaries. We are sure you are well aware of the Eurocentric concept of sovereignty as presently recognised and enforced

WGIP 84/0cc.Aus/3

by military means. Whilst indigenous people did not use the actual term or concept of sovereignty, cultural realities were such that a state of relations existed which had the same effect:-

- (1) There was territorial integrity.
- (2) There was a population occupying the territory.
- (3) That population governed itself by an intricate system of laws.
- (4) Neighbouring groups recognised each others legal, cultural and territorial integrity.
- (5) Emissaries, ambassadors if you like, operated under an intricate system of rules and rituals.

Although this situation of sovereignty existed, and we stress has never been relinquished, the colonising powers chose to create the myth of its non existence through the use of the doctrine of terra nullius.

To ensure maximum indigenous participation in the process of evolving United Nations standards, opportunities should be created for indigenous analysis at each stage of the process. With this in mind, we commend to you the Martinez Cobo Report as an invaluable source of information and ideas through which many of the necessary standards and principles can be identified. We urge the Working Group to recommend that the Sub-Commission endorse the Cobo report.

The Sub-Commission should distribute relevant parts of the Report and other relevant documents to all indigenous participants and invite their observations, comments and analysis. The Working Group ought to examine these responses and act on the basis of them.

When considering the standards applicable to land, the Working Group cannot forget the land's intrinsic role in Aboriginal culture. Nor can it forget existing standards established as principles of international law; for example, the right to self determination found in the Charter and Human Rights Covenants. The mere granting of "title" to land is totally inadequate.

We expect the Working Group to be well acquainted with the extensively documented social, cultural, economic and spiritual deprivations and disadvantages facing indigenous people. These realities stem from the theft of our lands.

The return of the land must be accompanied by the ability to control and use the land in accordance with indigenous culture - any other course is meaningless. It must be remembered that land which is being returned has often been damaged and polluted. The land at Maralinga in South Australia referred to in an earlier intervention has been contaminated by the radioactive debris and fallout resulting from the British - Australian tests of the 1950's and 1960's. It is an empty gesture to return these lands which bear the scars of destructive technologies.

The right to self determination must exist on Aboriginal land. In this context the following standards should apply:

- Rights to
- (1) Health
 - (2) Education
 - (3) Family
 - (4) Trial by one's own values.
 - (5) Unrestricted movement
 - (6) Trade and commerce on indigenous terms
 - (7) Development of resources in a manner consistent with Aboriginal values
 - (8) Right to refuse development

Aboriginal communities should not be dominated by a centralised bureaucracy, even if the agents of that system are other Aboriginals.

Before concluding Madam Chair, we note and recommend the following:- Land Rights in Australia is not simply a question of what rights are granted by Australian municipal law. Rather, it is the recognition that these lands were unlawfully seized and that they must be returned to their rightful owners. Where land cannot be returned, compensation must be negotiated.

- (1) Compensation for damage to land must be paid.
- (2) Compensation for the destruction of forests, grasslands and natural flora and fauna must be paid.
- (3) Damage and destruction of language and culture must be compensated for.
- (4) The list could go on, but because of shortage of time we will stop there.

Finally Madam Chair, we recommend the following:-

- (1) That the Working Group join in the condemnation of the doctrine of terra nullius as a crime against humanity.
- (2) That procedures be developed whereby the legal implications of the application of this anti-human doctrine can be evaluated by the International Court of Justice