



# AUSTRALIA

UNITED NATIONS  
SUB-COMMISSION ON  
PREVENTION OF DISCRIMINATION  
AND PROTECTION OF MINORITIES.

WORKING GROUP ON INDIGENOUS  
POPULATIONS - EIGHTH SESSION.

STATEMENT BY MR BILL BARKER  
ACTING PERMANENT REPRESENTATIVE OF AUSTRALIA  
ON BEHALF OF THE AUSTRALIAN DELEGATION

ITEM 4 : STANDARD-SETTING ACTIVITIES : EVOLUTION OF  
STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS  
POPULATIONS.

GENEVA  
2 AUGUST 1990.

CHECK AGAINST DELIVERY.

AUSTRALIAN PERMANENT MISSION  
56, RUE DE MOILLEBEAU — 1211 GENEVA 19 — TELEPHONE 34 62 00

THANK YOU MADAM CHAIRMAN.

STANDARD-SETTING IS PERHAPS THE SUCCESS STORY OF THE UNITED NATIONS' 40 YEARS OF ACTIVITY IN THE FIELD OF HUMAN RIGHTS. SO MUCH SO THAT AUSTRALIA, ALONG WITH MANY OTHER COUNTRIES, BELIEVES THAT THE DRAFTING WORK OF THE UNITED NATIONS IN THE HUMAN RIGHTS FIELD IS SUBSTANTIALLY COMPLETED. IN GENERAL THE INTERNATIONAL COMMUNITY MUST NOW CONCENTRATE ON IMPLEMENTATION. I SAY "IN GENERAL" BECAUSE THERE ARE AREAS WHERE FURTHER STANDARD-SETTING WORK REMAINS TO BE DONE. WORK ON THE RIGHTS OF INDIGENOUS PEOPLES IS ONE OF THE MOST SIGNIFICANT OF THESE UNFINISHED TASKS. FOR THIS REASON AUSTRALIA SUPPORTS AN ACTIVE APPROACH TOWARDS THE COMPLETION OF A DRAFT DECLARATION WHICH WILL STRENGTHEN EXISTING INSTRUMENTS THROUGH PROVISIONS IN AREAS SPECIFIC TO INDIGENOUS PEOPLES WHO CONSTITUTE, AS WE ARE ALL ONLY TOO WELL AWARE, ONE OF THE MOST DISADVANTAGED AND VULNERABLE GROUPS IN THE WORLD.

AUSTRALIA NOTES THE RECENT ADOPTION OF ILO CONVENTION 169 ON INDIGENOUS AND TRIBAL POPULATIONS BUT RECOGNISES THAT THE PROPOSED UNITED NATIONS DECLARATION WILL NEED TO ADDRESS ISSUES RELATING TO INDIGENOUS PEOPLE WHICH GO BEYOND THE AMBIT OF THAT ILO CONVENTION.

THE COMMISSION ON HUMAN RIGHTS, IN SUCCESSIVE RESOLUTIONS ON THE WORKING GROUP, HAS REPEATEDLY ENCOURAGED THE GROUP TO MOVE ACTIVELY TOWARDS COMPLETION OF A DRAFT DECLARATION ON INDIGENOUS RIGHTS. OVER THE YEARS, THERE HAS BEEN EXTENSIVE DISCUSSION AND WRITTEN COMMENTARY ON WHAT SUCH AN INSTRUMENT SHOULD LOOK LIKE. YOUR DRAFT TEXT, MADAM CHAIRMAN, HAS PROVIDED THE BASIS FOR THIS WORK AND MY DELEGATION COMMENDS THE DILIGENCE AND ENERGY YOU HAVE APPLIED TO THE TASK.

IN THE WORKING GROUP LAST YEAR THERE WAS A REALISATION THAT THE DRAFTING EXERCISE HAD TO BE MOVED INTO A HIGHER GEAR. ALL OF US HAVE BEEN AWARE THAT THE DRAFTING OF THIS DECLARATION IS A DIFFICULT, TIME-CONSUMING AND OFTEN CONTROVERSIAL PROCESS. BUT TO HAVE A CHANCE OF SUCCESS IT MUST MOVE BEYOND THE STAGE OF JUST EXPRESSING VIEWS. ON SOME POINTS THERE ARE FUNDAMENTAL DISAGREEMENTS AMONG THE PARTICIPANTS. THOSE PARTICIPANTS MUST EVENTUALLY COME TO GRIPS WITH THE ISSUES THROUGH SOME FORM OF NEGOTIATION WITH EACH OTHER, EVEN IF IT MUST BE ESSENTIALLY INFORMAL AT THIS STAGE. AS THE LEADER OF THE AUSTRALIAN GOVERNMENT DELEGATION OBSERVED IN HIS PRESENTATION TO THE WORKING GROUP ON MONDAY, IT IS TO BE HOPED THAT GOVERNMENTS WILL BECOME MORE CLOSELY INVOLVED IN WORK REMAINING TO BE DONE ON THE DRAFT DECLARATION.

THE MINISTER FOR ABORIGINAL AFFAIRS, MR TICKNER, HAS ASKED ME TO REITERATE TO THE WORKING GROUP THAT HE INTENDS TO ENCOURAGE DIALOGUE BETWEEN AUSTRALIAN NGO REPRESENTATIVES,

THE ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION AND THE AUSTRALIAN DEPARTMENT OF FOREIGN AFFAIRS AND TRADE BY WAY OF NEGOTIATIONS OVER THE COMING YEAR AS A FURTHER AUSTRALIAN CONTRIBUTION TO THE PROCESS OF STANDARD-SETTING.

AUSTRALIA'S DETAILED COMMENTS ON THE REVISED DRAFT TEXT ARE TO BE FOUND IN DOCUMENT E/CN.4/SUB.2/AC.4/1990/1/ADD.1. MY DELEGATION HAS ALSO MADE EXTENSIVE COMMENT IN THE DRAFTING GROUPS. ALTHOUGH THE DRAFTING GROUPS' REPORTS USE THE WORD "ADOPTION" TO REFER TO THE REDRAFTED PARAGRAPHS, OUR UNDERSTANDING IS THAT THERE WAS NO FORMAL ADOPTION PROCESS AND THAT THE PARAGRAPHS AS SET OUT IN THE REPORTS ARE SIMPLY SUBMITTED TO THE WORKING GROUP FOR THEIR GUIDANCE AND CONSIDERATION.

WE NOTE THAT AUSTRALIAN POSITIONS HAVE NOT BEEN REFLECTED IN SOME OF THE ARTICLES AS THEY HAVE BEEN SUBMITTED BY THE INFORMAL DRAFTING GROUPS AND CONSIDER THAT THESE SHOULD BE THE SUBJECT OF FURTHER STUDY. WE BELIEVE THAT OTHER PARAGRAPHS ON WHICH THERE WAS GENERAL AGREEMENT, PARTICULARLY THOSE DEALT WITH IN DRAFTING GROUP III COULD BE CONSIDERED BY THE WORKING GROUP FOR EARLY ADOPTION.

AS HAS FREQUENTLY BEEN MENTIONED IN THE DRAFTING GROUP SESSION THIS YEAR, WE ARE STILL ONLY AT THE BEGINNING OF A LONG SEQUENCE OF STEPS WHICH ARE NECESSARY IF THE DRAFT DECLARATION IS TO BECOME A REALITY. AFTER THE WORKING GROUP HAS ADOPTED A DRAFT, IT MUST GO TO THE SUB-COMMISSION AND THEN - MOST CRITICALLY - TO THE

COMMISSION ON HUMAN RIGHTS, WHERE IT WILL BE CONSIDERED FOR THE FIRST TIME IN A FULLY INTER-GOVERNMENTAL FORUM. FROM THERE IT HAS TO GO, PREFERABLY ON THE BASIS OF CONSENSUS, TO ECOSOC AND FINALLY TO THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

I MENTIONED CONSENSUS. WHY DOES AUSTRALIA CONSIDER THAT CONSENSUS IS NECESSARY TO THE SUCCESS OF THIS EXERCISE? FIRSTLY, HUMAN RIGHTS INSTRUMENTS ARE MEANT TO BE, AND SHOULD BE, UNIVERSAL : THEY SHOULD APPLY EVERYWHERE. THE PRESENT DRAFT OF THE DECLARATION INCLUDES THE WORD "UNIVERSAL" IN ITS TITLE. WE CAN HARDLY HAVE A UNIVERSAL DECLARATION WHICH IS SUBJECT TO SIGNIFICANT CONTROVERSY OR OVER WHICH THERE IS SUBSTANTIAL DISAGREEMENT. IT IS THIS SENTIMENT WHICH LIES BEHIND THE PROVISIONS OF THE UNITED NATIONS GENERAL ASSEMBLY'S REQUEST, IN ITS RESOLUTION 41/120, THAT FUTURE INSTRUMENTS IN THE FIELD OF HUMAN RIGHTS SHOULD BE ABLE TO ATTRACT BROAD INTERNATIONAL SUPPORT. IN OTHER WORDS, THE DRAFT THAT IS PRESENTED EVENTUALLY TO THE GENERAL ASSEMBLY SHOULD BE ADOPTED UNANIMOUSLY BY THE GOVERNMENTS REPRESENTED THERE. IT IS CLEAR THAT THE AGREEMENT AND SUPPORT OF GOVERNMENTS ON THE BROADEST SCALE WILL BE NECESSARY FOR THE ADOPTION OF A DECLARATION ON INDIGENOUS RIGHTS.

AUSTRALIA RECOGNISES THAT THIS DRAFT DECLARATION IS MORE COMPLEX THAN MANY OTHER HUMAN RIGHTS INSTRUMENTS CONSIDERED IN THE UNITED NATIONS. IN PARTICULAR WE BELIEVE THAT WITHOUT SUBSTANTIAL INDIGENOUS PARTICIPATION

IN THE DRAFTING, THE DECLARATION WILL LACK CREDIBILITY. TO BE EFFECTIVE IT MUST ENJOY THE SUPPORT OF THE PEOPLE WHOSE RIGHTS IT ASSERTS. AND FOR THIS REASON MY DELEGATION BELIEVES THAT ALL INTERESTED PARTIES, BOTH GOVERNMENTS AND INDIGENOUS PEOPLES THROUGH THEIR NGO REPRESENTATIVES, SHOULD SIT DOWN TOGETHER FROM THE VERY EARLIEST STAGES TO EXPRESS THEIR VIEWS FREELY AND VIGOROUSLY, TO DISCUSS, AND TO SEEK TO PERSUADE EACH OTHER. THIS IS THE BEST WAY TO ENSURE THAT WHEN THE WORKING GROUP IS CONSIDERING THE DRAFT, IT CAN DO SO WITH THE FULLEST INFORMATION AVAILABLE ON THE VIEWS AND WISHES OF THOSE GOVERNMENTS AND PEOPLES WHOM THE DECLARATION WILL AFFECT MOST. EARLY COOPERATIVE CONSIDERATION OF THE DRAFT BY ALL PARTIES WILL ALSO ENSURE THE WIDEST POSSIBLE MEASURE OF INTERNATIONAL SUPPORT FOR IT. IN THIS CONNECTION, I REPEAT MY EARLIER OBSERVATION THAT AUSTRALIA IS SOMEWHAT DISAPPOINTED THAT FEW GOVERNMENTS HAVE TAKEN AN ACTIVE PART IN THE INFORMAL DRAFTING WORK AT THIS SESSION.

IT IS MY GOVERNMENT'S INTENTION TO SUPPORT PROPOSALS FOR CONTINUED EXTENDED CONSIDERATION OF THE DRAFT DECLARATION AT FUTURE WORKING GROUP SESSIONS, PROVIDED THE EXTRA TIME CAN BE JUSTIFIED IN TERMS OF THE PROGRESS ACHIEVED. THE OUTCOME OF THE CONSIDERATION BY THE 46TH SESSION OF THE COMMISSION ON HUMAN RIGHTS OF HOW BEST TO PROCEED HAS PROVED LESS THAN FULLY SATISFACTORY. THE "COMPROMISE" OF 10 SERVICED MEETINGS IN 10 WORKING DAYS HAS CERTAINLY GIVEN OPPORTUNITY FOR EXTENDED DISCUSSION. BUT THE

ABSENCE OF SPANISH INTERPRETATION HAS MEANT THAT MANY PARTICIPANTS HAVE NOT BEEN ABLE TO TAKE FULL ADVANTAGE OF THIS OPPORTUNITY. WE ARE AWARE ALSO THAT SOME PARTICIPANTS FEEL THAT 10 WORKING DAYS IS TOO LONG. IN PARTICULAR, IT LEAVES NO TIME FOR THE TRADITIONAL PRE-SESSIONAL NGO PREPARATORY MEETING.

IN THE LIGHT OF THIS EXPERIENCE, AUSTRALIA CONSIDERS THAT A VARIETY OF OPTIONS FOR CARRYING ON THE DRAFTING WORK SHOULD BE CONSIDERED. A FULL WEEK'S PLENARY WILL PROBABLY CONTINUE TO BE NEEDED BUT THERE WOULD NOT BE TIME, WITHIN THIS FIVE-DAY SPAN, FOR SUFFICIENT ATTENTION TO STANDARD-SETTING.

I DO NOT WISH TO PURSUE IN THIS STATEMENT DETAILS OF THE POSSIBLE OPTIONS FOR CONTINUED DRAFTING WORK BUT MY DELEGATION CONSIDERS THE WORKING GROUP SHOULD UNDERTAKE INFORMAL CONSULTATIONS DURING THIS SESSION IN ORDER TO ARRIVE AT AN APPROPRIATE SOLUTION. AUSTRALIA CAN SEE NO REASON WHY THE HUMAN RIGHTS COMMISSION SHOULD NOT BE ACCOMMODATING TO WHATEVER CONSTRUCTIVE PROPOSALS COME OUT OF THE WORKING GROUP AND THE SUB-COMMISSION. AFTER ALL, THE COMMISSION HAS APPROVED SERVICED MEETING TIME FOR EXTENDED MEETINGS OF OTHER WORKING GROUPS CONSIDERING DRAFT INSTRUMENTS IN THE HUMAN RIGHTS AREA, INCLUDING THE WORKING GROUP ON THE RIGHTS OF MENTALLY ILL PERSONS AND THE WORKING GROUP ON THE RIGHTS OF HUMAN RIGHTS DEFENDERS. SIMILAR CONSIDERATION SHOULD BE EXTENDED TO THIS WORKING GROUP AT ITS NEXT SESSION.

IN CONCLUSION MADAM CHAIRMAN, LET ME MAKE AUSTRALIA'S POSITION CLEAR. AUSTRALIA WISHES TO SEE THE ADOPTION OF A DRAFT DECLARATION WHICH BOTH ASSERTS MEANINGFULLY THE PARTICULAR RIGHTS OF INDIGENOUS PEOPLES, WHICH BUILDS ON EXISTING INSTRUMENTS AND WHICH WILL OFFER A SUBSTANTIALLY GREATER MEASURE OF PROTECTION THAN AT PRESENT APPLIES. WHILE WE RECOGNISE THAT IT WILL BE SOME TIME BEFORE THIS WILL FINALLY HAPPEN, THE OBJECTIVE SHOULD BE TO COMPLETE THE DRAFT WITHIN A FINITE AND REASONABLE TIME FRAME. WE EXPECT THE DRAFT WILL PROBABLY REMAIN FOR A FURTHER TWO OR THREE YEARS IN THE WORKING GROUP BEFORE IT WILL BE READY TO GO TO THE SUB-COMMISSION. IT COULD TAKE LONGER. BUT IN THE MEANTIME, THERE ARE MANY ELEMENTS OF THE DRAFT WHICH WE BELIEVE CAN BE THE SUBJECT OF RELATIVELY EARLY AGREEMENT AND ADOPTION AT FIRST READING BY THE WORKING GROUP. WE KNOW OF COURSE THAT THERE ARE MANY OTHER ISSUES ON WHICH EARLY AGREEMENT IS MUCH LESS LIKELY. BUT WE BELIEVE IT IS IMPORTANT THAT THERE SHOULD BE ESTABLISHED A STEADY PATTERN OF WORK BASED ON A CONSTRUCTIVE APPROACH BY ALL PARTICIPANTS.

MADAM CHAIRMAN, IT IS NOT YET CLEAR WHAT WILL BE THE OUTCOME OF THE DRAFTING WORK AT THIS SESSION BUT MY DELEGATION HOPES THAT WE WILL BE ABLE TO SAY WE HAVE MADE PROGRESS. WE HOPE ALSO THAT WORK ON THE DRAFT DURING THE COMING YEAR, THROUGH CONSIDERATION AND COMMENTS BY INTERESTED PARTIES AND THROUGH ACTIVITY ON A SECOND REVISED TEXT, WILL ADVANCE THE PROCESS FURTHER.

THANK YOU MADAM CHAIRMAN.