

## **United Nations**

Permanent Forum on Indigenous Issues

Thirteenth Session

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Agenda Item 3 - Governance (including Study on Optional Protocol)

### **Intervention by Les Malezer, National Congress of Australia's First Peoples**

delivered 13 May 2014

Madam Chair

I begin my statement under this Agenda Item with a brief account of the contemporary situation in Australia regarding the rights of the Aboriginal and Torres Strait Islander Peoples.

Our right to self-determination, to determine our political status, to exercise self-government or other form of autonomy, and to freely pursue our economic, social and cultural development, is not acknowledged by the State and, in fact, is prevented through specific policies and actions taken unilaterally by the State.

It is disappointing to say, for example, that the 50 or so Aboriginal and Torres Strait Islander governments that formally existed in Australia before the adoption of the Declaration no longer exist in Australia since the Declaration. All formal Aboriginal or Torres Strait Islander governments have since 2007 either been abolished or are otherwise mainstreamed so that they no longer reflect representation and decision-making by Aboriginal and Torres Strait Islander Peoples.

In these few words, I point out that the rights contained in Articles 3,4,5 & 6 of the Declaration remain absolutely ignored by the State since the State voted against the Declaration. This situation, of our collective failure to make progress on the rights of Indigenous Peoples in Australia, is most likely typical of scenarios around the world.

At the national and international level the States have not made sufficient effort to acknowledge our rights to self-determination, to self-government or political development.

Madam Chair

I turn my attention to the study on an optional protocol to the Declaration.

It follows that the expectations of the States and Indigenous Peoples who worked so hard to achieve the Declaration - that partnerships between States and Indigenous Peoples would be formed to ensure that the minimum rights set out in the Declaration would be achieved through cooperative effort, and in good faith - are not being met, and are not even attempted.

In most regions of the world, in fact every region except Asia / Pacific, there exist regional courts to address disputes between States and the Indigenous Peoples. However these courts, although not controlled by States, do not necessarily meet the standard set in Art. 27 of the Declaration, namely as 'fair, independent, impartial, open and transparent' processes to adjudicate the rights of Indigenous Peoples.

It is for this reason that we remain interested in exploring the idea of an optional protocol as outlined in document E/C.19/2014/7.

We realise of course that it will be a challenge within the UN system to have States agree to comply with standards of accountability and transparency, but we should be reminded that the

General Assembly has already concluded the Indigenous Peoples of the world "have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising... their right to development in accordance with their own needs and interests". It is from this base, this realisation, that the United Nations must provide member States with the opportunity to reform their long-term and institutionalised treatments of the Indigenous Peoples.

Madam Chair

The outstanding achievement of the Declaration was not to define human rights - that has been determined through the Universal Bill of Rights - but to identify the collective rights that have been historically denied to Indigenous Peoples, eg our rights to our lands, our territories, our resources and our institutions and systems..

We therefore see merit and relevance in the recommendation to establish an 'optional protocol', a voluntary mechanism at the international level to which Indigenous Peoples along with States can direct claims and disputes in relation to lands, territories and resources. We support the recommendations in Para 48 of the report, but would like to add that, in order to ensure fair and independent arbitration, the mechanism should have the capacity to identify and communicate directly with Indigenous Peoples' governments, representative institutions or authorities.

Finally, Madam Chair

We suggest that the Permanent Forum consider obtaining from ECOSOC a decision for a further study to be conducted on this subject which will address relevant issues raised during this session.

ENDS