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Delivery

WGIP90 604/808.1114/1

WORKING GROUP ON INDIGENOUS POPULATIONS

EIGHTH SESSION

23 JULY - 3 AUGUST 1990

NEW ZEALAND STATEMENT

UNDER ITEM 4

DELIVERED BY

HE MR T J HANNAH

PERMANENT REPRESENTATIVE

NEW ZEALAND PERMANENT MISSION, GENEVA

23 JULY 1990

Nga hau e wha, nga iwi e tau nei, tena koutou, tena koutou, tena koutou katoa.

Madam Chairperson, esteemed members of the Working Group, all the people gathered here from the four corners of the world, greetings, greetings to you all.

This is the first time that I have attended the Working Group and it is a great personal honour for me to have this opportunity to address you. The valuable work you are doing to promote and safeguard the rights of indigenous peoples everywhere is much admired by New Zealanders. And Maori people, in particular, are very interested in your progress in drafting the Declaration on the Rights of Indigenous Peoples.

The 30 principles currently set out in that draft Declaration are an important step towards the development of international standards with which all governments must comply. Their objective is to ensure that all indigenous peoples can properly enjoy their fundamental rights and freedoms and can preserve and develop their collective ethnic and cultural characteristics.

Recently, my Government also drafted a set of principles. Ours are entitled "Principles for Crown Action on the Treaty of Waitangi" and they are to guide the New Zealand Government in dealing with issues which arise out of that Treaty. They create a framework for the Government's relations with the tangata whenua - the indigenous Maori people of New Zealand. New Zealand's Treaty of Waitangi was, in the words of our Court of Appeal, a solemn compact through which the colonisation of New Zealand was to become possible. In the Treaty the indigenous people acknowledged the legitimacy of the acquisition of sovereignty and in return obtained certain guarantees.

There is an important provision in your draft Declaration, Madam Chair - one indeed which my Government indicated last year it wished to see strengthened - which refers to treaties concluded with indigenous peoples. Draft principle 27 talks of the requirement that states honour such treaties.

New Zealand's set of 5 principles (the Principle of Government, the Principle of Self Management, the Principle of Equality, the Principle of Cooperation and the Principle of Redress) make it clear how in New Zealand our Treaty - the Treaty of Waitangi - will be honoured. Our principles provide a clear articulation of the Government's responsibilities and of its obligations. They recognise the nature of the power given to Government by the Treaty. They recognise the extent of the Maori interest which Government has promised to protect. And above all, they assure New Zealanders that everyone will be treated fairly. The objectives of your principles, Madam Chair, and my Government's are therefore the same.

It is important that New Zealand has now laid down this framework for action under the Treaty of Waitangi. This is the year of a major New Zealand anniversary - it is one hundred and fifty years since the Treaty was signed. Yet not all New Zealanders would agree that this anniversary is an occasion for celebration. A few noisy - but very small - groups at both ends of the spectrum seek either to diminish the Treaty or denigrate the Government's efforts to honour it.

It is true that during certain periods of our history the Treaty was not properly honoured. However, the New Zealand Government has made significant efforts to realise the aspirations of Maori people which are founded in the Treaty of Waitangi. The Working Group will be aware from previous New Zealand statements that a positive and dynamic view of the Treaty has developed in New Zealand in recent years. This has led to its achieving an enhanced status in our society, and has resulted, too, in a greater awareness of Maori cultural values and a commitment by the Government to improve the economic and social position of Maori people.

The New Zealand Government, acknowledging that there has in the past been a failure to live up to the promises of the Treaty has shown a determination to redress outstanding grievances and injustices. The Prime Minister, opening a major Human Rights Conference last year, stated:

"We cannot change our history. But we can decide our future... It is for the sake of securing our collective future as a nation that the Government must deal with abuses and injustices of the past. When the Government decides to accept recommendations from the Waitangi Tribunal to return Crown land to its rightful owners, or compensate them for it ... It is a belated but just resolution of outstanding grievances. It is acknowledging the wrongs of past Governments for a more secure future".

This then is what New Zealanders are celebrating during their anniversary year: a commitment to seeing the spirit of the Treaty reflected in our society, a determination to repair the mistakes of the past, and a desire to see the emergence of a harmonious and meaningful partnership, between Maori and all other New Zealanders, based on mutual respect and responsibility.

That concept of partnership means that Maori people, the tangata whenua, must have the opportunity to express their views on your draft principles, Madam Chair. Accordingly, in order to facilitate this process, earlier this year the New Zealand Government released a consultation document which sought the views of Maori on the draft Declaration on the Rights of Indigenous Peoples. This consultation booklet contained:

- an introduction setting out the background to the United Nations' work in this field;
- the text of the draft Declaration;
- a copy of the statement delivered last year to this Working Group which outlined New Zealand's preliminary impressions of the draft Declaration;
- the text of the 1948 Universal Declaration of Human Rights in English and in Maori;
- the text of the 1966 International Covenant on Civil and Political Rights, again, in English and in Maori.

It had been intended, Madam Chair, to use your visit to New Zealand - which was to have taken place last month - to build on this consultation process by giving representatives of all Maori tribes the opportunity to discuss the draft Declaration with you. It was a matter of real regret to my Government, and to many New Zealanders, that you were not able to come. We had been looking forward to having you as our guest and I can only hope that you are now completely restored to good health.

In place, then, of your visit and the opportunity to discuss points of concern directly with you, Madam Chair, we have handed across to you copies of the written comments received from Maori people pursuant to the consultation document. I hope that their comments will be of interest to you, and to other members of the Working Group.

It is, of course, important that indigenous peoples from all countries have the opportunity to state their views on the draft Declaration. I believe, in this regard, that the proposal for three informal drafting groups to meet this year during the Working Group's session will provide a particularly useful opportunity to hear the views of indigenous representatives. New Zealand will accordingly observe the proceedings of these drafting groups with great interest.

It might be useful as our attention begins to turn to the work of the three drafting groups if I were to restate some of the New Zealand Government's preliminary impressions (outlined in our statement to the Working Group last year) of some of the major themes of the draft Declaration.

I would emphasise again, as a first point, that the requirements of United Nations Resolution 41/120 (which adopted guidelines for the setting of international standards in the field of human rights) must be borne in mind. The Declaration must also be consistent with existing international law by making it clear that indigenous peoples are entitled to the protection of all the human rights provisions already adopted by the United Nations and, equally, by ensuring that the principles in the Declaration do not derogate from existing human rights standards.

The standards set by this Declaration must be sufficiently precise to give rise to identifiable and practicable rights and obligations and yet must also be universal in their scope so that they can apply to a broad range of differing legal and factual situations. Above all, the Declaration must not be directed in the main at countries with a federal division of powers nor be capable of effective implementation only in those states which have set aside distinct areas or "reserves" for the indigenous peoples within their borders.

Within this general context, the New Zealand Government has made a number of more specific preliminary observations. These included the following suggestions:

- as regards draft principle 9, the right to use indigenous languages for administrative and legal purposes should be couched in terms of an objective to be worked towards;
- draft principle 10 appears to refer in one sentence to three separate rights: the right to all forms of education, the right to education in the indigenous language and the right to control of their own educational systems and institutions. These issues need to be addressed separately and there are some problems regarding a lack of precision in the language used at present. It would also be useful to expand the scope of the principles to cover access to education in cultural traditions and heritage;

- it would seem desirable to deal separately with land and resources, given the differing legal regimes often applicable to these two issues. The language of draft principle 12 also needs clarification given its reference to the possession of lands in the past tense. This is in contrast to ILO Convention 169 which refers to the rights of indigenous peoples to "ownership and possession of those lands which they traditionally occupy";
- draft principle 23 would give indigenous peoples the "right to autonomy in matters relating to their own internal and local affairs, including education, information, culture, religion, health, housing, social welfare, traditional and other economic activities, land and resources administration and the environment, as well as internal taxation for financing these autonomous functions". It seems to the New Zealand Government that this is one of a number of principles in the present text of the draft Declaration which appear to presuppose a system of indigenous reserves or separate areas. There is an implication or presumption of segregation which we in New Zealand find unhealthy. Instead, New Zealand's policies in the Maori Affairs area are designed to promote decision-making in the machinery of government in areas of importance to Maori communities and to provide opportunities for Maori people to participate actively on jointly agreed terms in policy formulation and service delivery. The Principles of Kawanatanga and Rangatiratanga (the Principles of Government and Self Management contained in our set of principles to which I referred above), cover similar ground to draft principle 23, in allowing for participation by Maori in the design and implementation of programmes and services, and the right of Maori to organise as iwi and to control their own resources. There can be no absolute right, however, to determine the nature of policies to be implemented in the areas outlined by draft principle 23;
- draft principle 25 talks of the "right to determine the responsibilities of individuals to their own community". The meaning of this phrase is unclear and requires clarification. New Zealand could not - on the basis of Article III of the Treaty of Waitangi which guarantees the equality of all persons before the law - support this principle if it could be seen as sanctioning legal pluralism (ie as requiring a system of separate laws for indigenous peoples);

- I have already referred above to draft principle 27. In its present form this principle is unacceptably weak. It simply states that there is a "right to claim that states honour treaties and other agreements with indigenous peoples". New Zealand believes this principle should also refer to the obligation to provide a mechanism to ensure that states honour their treaty commitments. Were it otherwise, treaties - such as the one signed at Waitangi in 1840 - could not become symbols of national unity and the basis for a partnership between peoples. This is what New Zealand is reaching for in this the 150th year since the signature of our Treaty.

Before closing I would like, again, to congratulate the Working Group on the progress it has made so far in the complex task of drafting universal standards on indigenous rights. It is also noteworthy that these annual sessions of the Working Group provide a unique opportunity for representatives of indigenous peoples and other advocates of indigenous rights to present directly their views and perspectives on issues which are of paramount concern to them. The Working Group provides a forum for the airing of grievances, often long-standing ones. It also provides a channel for communication and, sometimes, for the eventual resolution of problems. This aspect of the Working Group's mandate is as essential, and as deserving of support, as its standard-setting work.

For this reason I would like to commend to all government representatives here the Voluntary Fund for Indigenous Populations which provides funds to assist indigenous representatives to travel to Geneva to participate in these meetings. The New Zealand Government has provided an annual contribution to the Voluntary Fund. I would like to encourage other governments, who have not already done so, also to consider making a contribution as a practical demonstration of support for the Working Group.

Madam Chairperson, New Zealand looks forward to further constructive involvement and contact with the Working Group as its work proceeds.