

Please check against delivery

SUB-COMMISSION ON THE PROMOTION & PROTECTION OF HUMAN RIGHTS
WORKING GROUP ON INDIGENOUS POPULATIONS

Françoise Hampson

Agenda Item 6(f) – disappearance of States and territories for environmental reasons

Mr. Chairman,

This week we have heard of many cases of territories taken from an indigenous group and devastated and despoiled by alien activities, such as mining and deforestation. This report is dealing with something different. It is dealing with territories that are going to disappear permanently under the waves for environmental reasons. The inhabitants are going to have to leave their homes and territories.

The issue was first raised in this working group last year. The Sub-Commission, at the request of the working group, asked the Commission to refer the question to the appropriate UN body to address the problem as a whole, taking into account the human rights of the inhabitants, including their rights as indigenous peoples. Instead, the Commission decided to refer the question back to the Sub-Commission.

Which *kinds* of territories are involved? States, territories in association with other States and dependent territories. The territories are located in the Pacific Ocean, the Indian Ocean and the Caribbean.

It is not clear which *particular* territories are at issue. First, the problem does not affect *all* low-lying States and territories. For example, whilst the Maldives are affected, there is no evidence that Diego Garcia is similarly affected, judging by the investment being made in the US base on the island. Second, some territories which are *not* entirely low-lying may be affected. That could happen, for example, where the population lives on a low-lying coastal plain which will be submerged and the remaining land, by its size, nature or type, will not be capable of sustaining any or all of the existing population. I would suggest that any further report should include at least those territories which will have to be completely evacuated and possibly those a proportion of whose population will need to be evacuated, in order to allow the others to remain. I should appreciate the guidance of the working-group on how wide the net should be drawn. The problem affects not only island States, such as Tuvalu and the Maldives, but also island territories which are not States. Should a further report include both? I would suggest that it should because the human rights issues are the same, especially the issues of indigenous rights, whether or not there is another State which can be expected to deal with the problem.

I would recommend that the Working Group ask the Sub-Commission to seek the authorization of the Commission to send out a questionnaire to all States which have islands in their national territory or which have responsibility for islands, so that we can

identify the scale of the problem. It is not possible to identify possible solutions without an understanding of the scale of the problem.

The next difficulty lies in determining whether the peoples affected are indigenous peoples. One definition of indigenous peoples defines them by contrast to those in power. That would seem to present difficulties in the case of island indigenous peoples who have acquired independence and formed a sovereign State. I would suggest, however, that there is a difference between qualifying for the *status* of indigenous people and the implications as far as rights are concerned. Where the indigenous people are in power, the issue of indigenous rights is likely in practice to be in abeyance but that cannot change the status of the people. Why does it matter whether the people are seen as indigenous? It may affect their moral claim to live in community with one another in the territory of another State, when they are forced to relocate.

As far as I am aware, the problem of States ceasing to exist without being replaced by a successor State is unprecedented in international law. It gives rise to a variety of legal problems, some of which are identified in the report. Some of the issues, but by no means all of them, are human rights questions concerned with the peoples need for resettlement and the question of their rights in a receiving State. I would recommend the holding of one or more seminars, with the participation of people from the affected territories and with a variety of experts, to seek to identify the practical and legal problems to which the disappearance of these territories will give rise.

Third States have very little in the way of legal *obligations* towards the peoples affected. In a sense, their claim is against the international community as a whole. The down-side, at least in the case of disappearing States, is that one cannot point to a specific State with specific obligations. The up-side is that this is a chance for the community of States to come together to solve a problem, without the fear of creating a legal precedent or conceding entitlements as of right. Some possible solutions are suggested in the report but it will be easier to identify what is needed once there is a clearer view of the nature and scale of the problem.

One thing that is clear is that no organization appears to be dealing with the problem of the need of certain peoples to leave their island homes. There are organizations dealing with the question of the sustainable development of small island developing states (SIDS) but they are not dealing with what happens when sustainable development is not possible. The report refers to a conference in Mauritius in August 2004. That has now been postponed until January 2005. I do not know if there is a way in which the issue of the rights of inhabitants of disappearing States and territories could be put on the agenda of that meeting.

To date, the only initiatives seem to have been bilateral. The Prime Minister of Tuvalu has sought agreements with Australia and New Zealand to receive a number of citizens of Tuvalu each year. Australia refused. New Zealand agreed in principle, as indicated in the report, but my latest information is that they are applying criteria which apply to other, non-threatened, pacific islanders, as a result of which very few citizens of Tuvalu qualify

for resettlement. In other words, New Zealand is treating the issue as a "normal" migration issue, rather than as, in effect, an environmental asylum issue.

I would recommend that a further report be submitted next year to both this Working Group and the Sub-Commission as a whole. I think it important that the issue should continue to be addressed in this forum because of the indigenous rights dimension to the problem. In the meantime, all possible means should be adopted to bring this problem to the attention of the international community as a whole.