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CHAIRPERSON



WGIP 93/OCE.AUS/4

WORKING GROUP ON INDIGENOUS POPULATIONS
11TH SESSION
19-30 JULY 1993

STATEMENT BY MISS LOIS O'DONOGHUE, CBE, AM
ON BEHALF OF THE ABORIGINAL AND TORRES STRAIT
ISLANDER COMMISSION

ITEM 4: STANDARD SETTING ACTIVITIES: EVOLUTION OF
STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS
POPULATIONS (DRAFT DECLARATION ON THE RIGHTS OF
INDIGENOUS PEOPLES)

CHECK AGAINST DELIVERY

GENEVA

21 JULY 1993

DRAFT DECLARATION ON THE
RIGHTS OF INDIGENOUS PEOPLES

MADAME CHAIRMAN,

THE ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION (ATSIC) WILL PROVIDE TO THE SECRETARIAT IN WRITING ITS DETAILED COMMENTS ON THE TEXT OF THE PARAGRAPHS IN THE DRAFT DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES. IN DOING SO WE WILL TAKE INTO ACCOUNT THE ARGUMENTS PUT FORWARD IN THIS FORUM, PARTICULARLY BY THE REPRESENTATIVES OF INDIGENOUS ORGANISATIONS. HOWEVER AT THIS STAGE I WILL CONFINE MY SPOKEN REMARKS TO FOUR SUBSTANTIVE ISSUES.

FIRST, ATSIC BELIEVES THAT THE TEXT MAY BE MORE DETAILED AND MORE PRESCRIPTIVE THAN IS NECESSARY, AND SUPPORT YOUR INTENTION, MADAME CHAIRMAN TO REMOVE DUPLICATION IN WORDING AND TO PRODUCE A MORE CONCISE AND SIMPLER DECLARATION.

SECOND, ATSIC SUPPORTS STRONGLY THE FACT THAT THE DRAFT DECLARATION REFERS THROUGHOUT TO INDIGENOUS PEOPLES IN THE PLURAL. AS I NOTED EARLIER THIS IS THE CORRECT TERMINOLOGY. UNLIKE THE TEXT WHICH EMERGED FROM THE RECENT WORLD CONFERENCE ON HUMAN RIGHTS IN VIENNA, THE DRAFT DECLARATION RECOGNISES THE COLLECTIVE GROUP IDENTITIES OF INDIGENOUS PEOPLES AROUND THE WORLD.

INDIGENOUS PEOPLES POSSESS COMMUNAL IDENTITIES WITH COLLECTIVE RIGHTS. INDIVIDUAL HUMAN RIGHTS WILL NOT BE WEAKENED BY REFERENCE TO THE COLLECTIVE RIGHTS OF INDIGENOUS

MADAME CHAIRMAN,

DURING YOUR RECENT VISIT TO AUSTRALIA YOU PRESENTED A KEYNOTE ADDRESS WHICH ARGUED CONVINCINGLY THAT THE CONCEPT OF SELF DETERMINATION IS ONE THAT POSSESSES A CONTINUING RELEVANCE TO THE POST-COLONIAL WORLD. THIS IS A POSITION WE WHOLE-HEARTEDLY SUPPORT.

YOU NOTED THAT THE "EXTERNAL" SELF DETERMINATION BY WHICH PEOPLES LIBERATED THEMSELVES FROM IMPOSED ALIEN RULE CAN BE DISTINGUISHED FROM THE "INTERNAL" SELF DETERMINATION BY WHICH COLLECTIVE GROUPS OF INDIGENOUS PEOPLES SEEK TO PRESERVE AND DEVELOP THEIR CULTURAL OR TERRITORIAL IDENTITY WITHIN THE POLITICAL ORDER UNDER WHICH THEY LIVE.

THIS IS A SIMILAR DISTINCTION TO THAT MADE BY THE REPRESENTATIVE OF THE OBSERVER GOVERNMENT OF NEW ZEALAND, WHEN HE REFERRED TO THE "TRADITIONAL" AND THE "MODERN" INTERPRETATIONS OF SELF DETERMINATION.

THESE ARE IMPORTANT CLARIFICATIONS. HOWEVER ATSIK WOULD BE CONCERNED IF, IN ORDER TO ACHIEVE CONSENSUS AMONG THE 183 MEMBERS OF THE UNITED NATIONS, OBSERVER GOVERNMENTS WERE TO SEEK EXPLICITLY TO CONSTRAIN INDIGENOUS SELF DETERMINATION BY REFERENCE TO SUCH DISTINCTIONS. IT WOULD BE INAPPROPRIATE TO LIMIT THE APPLICATION OF THE CONCEPT SO AS NOT TO INFER THAT IT POSES ANY CHALLENGE TO THE NATION STATE. INDEED, ATSIK WOULD VIEW FURTHER QUALIFICATIONS TO THE REFERENCES TO SELF DETERMINATION AS AN UNNECESSARY WEAKENING OF THE TEXT.

PEOPLES. RATHER THE COLLECTIVE RIGHTS OF INDIGENOUS PEOPLES
COMPLEMENT, AND INDEED STRENGTHEN, THE INDIVIDUAL RIGHTS OF 300
MILLION INDIGENOUS PERSONS.

IT IS PRECISELY BECAUSE THE COLLECTIVE RIGHTS HAVE NOT BEEN
ACKNOWLEDGED THAT THE INDIVIDUAL RIGHTS OF INDIGENOUS PERSONS -
FOR EXAMPLE, THE RIGHT TO EQUALITY OF OPPORTUNITY IN THE
PROVISION OF EDUCATION, EMPLOYMENT AND HEALTH CARE - HAVE NOT YET
BEEN REALISED IN ANY NATION OF THE WORLD. ONLY WHEN OUR
COLLECTIVE IDENTITIES HAVE BEEN RECOGNISED WILL THE APPALLING
DISADVANTAGES THAT WE SUFFER AS INDIVIDUALS BE REDRESSED.

THIRD, I TURN TO THE RIGHT OF INDIGENOUS PEOPLES TO SELF
DETERMINATION SET OUT IN PREAMBULAR PARAGRAPH 15 AND IN OPERATIVE
ARTICLE 3. ATSIAC RECOGNISES THAT IT IS THIS CONTROVERSIAL
CLAUSE WHICH APPEARS TO ENGENDER GREATEST CONCERN FROM A NUMBER
OF THE OBSERVER GOVERNMENTS WHO FEAR THAT THE REFERENCE POSES A
THREAT TO THE TERRITORIAL INTEGRITY OF NATIONS.

HOWEVER ATSIAC BELIEVES THAT UNAMBIGUOUS REFERENCE TO SELF
DETERMINATION IS FUNDAMENTAL TO THE INTEGRITY OF THE DECLARATION
TO REMOVE THIS REFERENCE, WOULD IRREPARABLY DAMAGE THE
DECLARATION'S CONTENT, PARTICULARLY THE PARAGRAPHS IN PART VI
RELATING TO THE RELATIONSHIP OF INDIGENOUS PEOPLES TO THEIR LAND.

ATSIAC AGREES WITH THE VIEWS OF THE INDIGENOUS ORGANISATIONS
REPRESENTED AT THIS FORUM AND SUPPORTS THE POSITION WHICH WILL
BE CONVEYED TO YOU BY AUSTRALIA'S NON GOVERNMENT REPRESENTATIVES.

ATSIC SUPPORTS STRONGLY THE RETENTION OF THE REFERENCE TO SELF DETERMINATION IN THE DECLARATION AS A PROGRESSIVE MEASURE WHICH ESTABLISHES MINIMUM INTERNATIONAL STANDARDS. TO AUSTRALIA'S INDIGENOUS PEOPLES SELF-DETERMINATION IS AN ASPIRATIONAL CONCEPT WHICH EMBRACES A WIDENING SPECTRUM OF POLITICAL POSSIBILITIES, FROM SELF-MANAGEMENT BY INDIGENOUS PEOPLES OF THEIR OWN AFFAIRS TO SELF-GOVERNMENT BY INDIGENOUS PEOPLES OF THEIR OWN COMMUNITIES OR LANDS. SELF DETERMINATION IS A "DYNAMIC RIGHT" UNDER THE UMBRELLA OF WHICH ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES WILL CONTINUE TO SEEK INCREASING AUTONOMY IN DECISION-MAKING.

ATSIC NOTES WITH APPROVAL THE VIEW EXPRESSED BY THE REPRESENTATIVE OF THE OBSERVER GOVERNMENT OF DENMARK THAT THE STANDARDS SET IN THE TEXT CONTRIBUTE TO THE COHESION OF NATION STATES RATHER THAN INSPIRING FRAGMENTATION. WE WOULD ARGUE THAT IT IS UNNECESSARY TO REFER TO NATIONAL DISMEMBERMENT, TERRITORIAL INTEGRITY OR POLITICAL UNITY. RECOGNITION OF SELF DETERMINATION DOES NOT PROVIDE A MANDATE FOR SECESSIONIST SEPARATISM.

RATHER SELF DETERMINATION REPRESENTS THE CONCEPTUAL BASIS FOR THE PROGRESSIVE EMPOWERMENT OF INDIGENOUS PEOPLES. IN AUSTRALIA IT PROVIDES THE UNDERPINNING FOR THE FIGHT OF ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES FOR CONSTITUTIONAL REFORM, FOR THE LEGISLATIVE RECOGNITION OF NATIVE TITLE TO LAND, FOR INCREASED AUTONOMY AND FOR SOCIAL JUSTICE.

IT IS FOR THIS REASON, MADAM CHAIRPERSON, THAT ATSIC WOULD PREFER

TO REPLACE THE PRESENT TEXT WITH A SINGLE, BOLD VISIONARY STANDARD. THE DECLARATION SHOULD STATE IN SIMPLE UNAMBIGUOUS TERMS THAT ALL INDIGENOUS PEOPLES HAVE A RIGHT TO SELF DETERMINATION.

FOURTH, ATSIK STRONGLY SUPPORTS THE THRUST OF OPERATIVE ARTICLES 23-28, WHICH NOTE THE "DISTINCTIVE" OR SPECIAL ATTACHMENT OF INDIGENOUS PEOPLES TO LAND; RECOGNISE THEIR RIGHT TO CONTROL AND MANAGE THEIR LANDS; STRESS THEIR ENTITLEMENT TO JUST AND FAIR COMPENSATION FOR LAND WHICH HAS BEEN TAKEN FROM THEM; AND EMPHASISE THE NEED FOR INDIGENOUS PEOPLES TO GIVE INFORMED CONSENT PRIOR TO THE ECONOMIC DEVELOPMENT OF THEIR LAND, INCLUDING THE EXPLOITATION OF MINERAL RESOURCES.

MADAME CHAIRMAN, YOUR RECENT VISIT TO AUSTRALIA WILL HAVE MADE YOU AWARE OF JUST HOW RELEVANT ARE THESE PARAGRAPHS TO ABORIGINAL AND TORRES STRAIT ISLANDER PERSONS.

THE RESPONSES OF AUSTRALIAN GOVERNMENTS TO THE RECENT HIGH COURT DECISION ON NATIVE TITLE WILL BE CAREFULLY SCRUTINISED IN THE MONTHS AHEAD TO SEE THE EXTENT TO WHICH THEY KEEP FAITH WITH THE PARAGRAPHS SET OUT IN THE DRAFT DECLARATION.

WILL THE "DISTINCTIVE AND PROFOUND RELATIONSHIP" OF AUSTRALIA'S INDIGENOUS PEOPLES TO THEIR LAND BE RECOGNISED OR WILL NATIVE TITLE BE SEEN AS COMPARABLE TO THE FREEHOLD TITLE HELD BY NON INDIGENOUS AUSTRALIANS ? WILL LEGISLATION REQUIRE THE "FREE AND INFORMED CONSENT" OF NATIVE TITLE HOLDERS TO BE OBTAINED PRIOR TO RESOURCE DEVELOPMENT OR WILL THAT RIGHT BE COMPROMISED IN THE

INTEREST OF "FAST-TRACKING" PROJECTS ? WILL COMPENSATION FOR LAND, HOWEVER PAID, RECOGNISE THE SPIRITUAL AND CULTURAL LOSS SUFFERED BY INDIGENOUS PEOPLES OR WILL IT BE CALCULATED BY REFERENCE TO A NARROWLY CONSTRUCTED ECONOMIC DEFINITION ?

THESE COMMENTS ON THE OPERATIVE PARAGRAPHS IN PART VI ARE NOT INTENDED TO INDICATE THAT INDIGENOUS PEOPLES WILL WISH TO REFER TO THESE STANDARDS IN ORDER TO PREVENT THE ECONOMIC DEVELOPMENT OF THEIR LAND. RATHER THE EMPHASIS IN THE PARAGRAPHS UPON COLLECTIVE CONTROL, CONSENT AND COMPENSATION PROVIDE A BASIS FOR ENSURING THAT INDIGENOUS PEOPLES ARE ABLE TO GAIN THE BENEFITS OF FULL PARTNERSHIP IN THE SUSTAINABLE DEVELOPMENT OF THEIR NATURAL RESOURCES.

NOR ARE MY REMARKS MEANT TO CONVEY PESSIMISM. AT THE TECHNICAL GROUP MEETING LAST WEEK I PAID TRIBUTE TO THE PUBLIC COMMITMENTS MADE BY THE PRIME MINISTER OF AUSTRALIA, PAUL KEATING. HIS STATEMENTS PROVIDE HOPE THAT THE ASPIRATIONS OF AUSTRALIA'S INDIGENOUS PEOPLES WILL BE MET.

BUT TOO OFTEN IN THE PAST WE HAVE SEEN BOLD RHETORIC UNDERMINED BY FEEBLENESS OF ACTION. WE ARE YET TO BE CONVINCED THAT THE AUSTRALIAN FEDERAL GOVERNMENT'S COMMITMENT TO THE DRAFT DECLARATION WILL BE MATCHED BY COMMITMENT TO ITS IMPLEMENTATION. OF MORE CONCERN ARE THE RECENT ACTIONS OF SOME OF AUSTRALIA'S STATE GOVERNMENTS. EVEN AS WE SPEAK THE PREMIERS OF VICTORIA AND WEST AUSTRALIA ARE DRAFTING LEGISLATION TO LIMIT THE EFFECT OF THE HIGH COURT DECISION ON NATIVE TITLE, APPARENTLY UNAWARE OF THE AUSTRALIAN FEDERAL GOVERNMENT'S STRONG SUPPORT FOR THE DRAFT DECLARATION AND FOR THE CONCEPT OF SELF DETERMINATION.

ATSIC SERVES NOTICE ON ALL STATE AND TERRITORY GOVERNMENTS THAT
THEIR LEGISLATIVE RESPONSE TO THE HIGH COURT DECISION WILL BE
JUDGED NOT ONLY AGAINST THE RACIAL DISCRIMINATION ACT BUT AGAINST
AUSTRALIA'S INTERNATIONAL OBLIGATIONS AND COMMITMENTS.

THANK YOU.