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ABORIGINAL LAW NOTES

No. 83/3

May 1983

Being notes on matters of current interest concerning Aboriginals and the Australian legal system, as reported to, or discussed at meetings of the Aboriginal Law Research Unit.

SYDNEY

Next meeting: 5.30-7.00 p.m., Tuesday, 2 August 1983 at Tranby College, 13 Mansfield Street, Glebe, Sydney.

Speaker: Kevin Cook, Chairman, Interim NSW Land Council will talk about the tasks facing the Interim Council, under the new NSW land rights Act, the time available for those tasks, and the support (if any) that ALRU might be able to provide.

MELBOURNE

Next Meeting: To be arranged.

The ABORIGINAL LAW RESEARCH UNIT is located in the Faculty of Law, University of New South Wales, P.O. Box 1, Kensington, NSW, 2033, AUSTRALIA. Chairman, Garth Nettheim: Tel (02) 663-0351, Extension 3266. Melbourne Contacts: Bryan Keon-Cohen (03) 60-1876; Ian Grey (03) 602-2400; Brendon Kissane (03) 419-3888.

The Unit also publishes the Aboriginal Law Bulletin 4 times a year.

Aboriginal Law Notes is distributed to members of the Unit's Advisory Council. Subscription \$5.00 p.a.

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CHAIRMAN'S REPORT ON EUROPEAN VISIT, January - April 1983

My presence in England on academic study leave allowed me the opportunity to work in two related areas of relevance to the work of ALRU - human rights law, and the law relating to indigenous peoples.

At the Law School, Warwick University, I presented a seminar on "Law and Indigenous Peoples". This attracted considerable interest, and I arranged for members of the Warwick staff to receive copies of material from Australia.

I also gave a seminar on a similar topic in London to a meeting of the Aboriginal Support Group in conjunction with Shorty O'Neill, representative in Europe of the National Federation of Land Councils.

Also in London, I had discussions with Professor Geoffrey Bolton at the Institute of Commonwealth Studies about a proposed London Conference on indigenous people and international law.

I visited Geneva for one week to observe the annual meeting of the Human Rights Commission established under the United Nations Charter, and to meet staff members of the Centre for Human Rights in the U.N. Secretariat. I was particularly interested to discuss the new Working Group for Indigenous people. In April I visited UNESCO in Paris to learn more about significant developments in that organization in regard to human rights and indigenous peoples.

As Chairman of the Aboriginal Law Research Unit, I was able to let key people in these international agencies know of the existence and work of the Unit. Likewise I was able to establish contact with a number of important non-government organizations -

- The International Commission of Jurists (Geneva);
- The World Council of Churches (Geneva);
- The NGO Sub-Committee on Racism and Racial Discrimination (Geneva);
- JUSTICE (London);
- Amnesty International (London);
- The Minority Rights Group (London);
- Survival International (London);

The Anti-Slavery Society (London);
Survival International (Paris)

I arranged regular interchange of publications with some of these groups. I was able to provide particular assistance to Survival International in both London and Paris.

I had useful meetings with lawyer experts in these areas (other than those in the UN agencies) notably Gordon Bennett of the London Bar and Professor David Weissbrodt of the University of Minnesota. Gordon Bennett invited ALRU to contribute to development of proposals by Survival International for revision of ILO Convention No. 107.

These contacts, and what I learned from them, provided the basis for several reports in Aboriginal Law Research Unit publications and for an essay which is to be published in a forthcoming volume, Aborigines and the Law (ed. Hanks and Keon-Cohen).

I obtained information about recent developments of particular interest to Aboriginal organizations, namely:

- * The Working Group for Indigenous Populations
- * The UNESCO procedures for dealing with petitions complaining of human rights violations in regard to education science and culture
- * The emerging concepts of ethnocide and ethnodevelopment.

Garth Nettheim

REPORT FROM MEREDITH WILKIE, NSW ABORIGINAL LAND RIGHTS PROJECT

Since the last ALRU meeting I have been chiefly involved in writing a manuscript on the NSW Aboriginal Land Rights Act, which ALRU intends to publish. Drafts are available on request for those who can commit themselves to reading and making constructive comments.

While concentrating on a description and analysis of the Act of 1983, the book will also give some background to it, including discussion of the operations and recommendations of the Select Committee of the Legislative Assembly upon Aborigines which reported on Land Rights in 1980. A final chapter discusses future directions which the land rights movement might take.

In addition I have been called upon to give advice on various matters to the Interim NSW Aboriginal Land Council established at the end of May 1983, pursuant to the Land Rights Act.

ABORIGINAL LAW BULLETIN: JOHN TERRY'S REPORT

Issue No. 7 was published with the April Legal Service Bulletin. Issue No. 8 was to appear with the June LSB, but will not now do so. The reasons are various but mainly relate to shifts of editorial responsibility (in Neil Rees' absence) to Richard Chisholm and David Weisbrot (No. 7), and to John Terry (No. 8), coupled with the loss of Greg Lyons, participation in Melbourne. It was agreed that a Melbourne contact was needed, if only for liaison purposes, and that attempts would be made to find such a person. (Greg Lyons had felt a need to resign on taking an appointment with the Victorian Government).

ALS FIELD OFFICER TRAINING: JOHN TERRY'S REPORT

The second course held at the University of New South Wales is approaching its half-way point, and a half-yearly report will be compiled by 7 July.

Indications are that Federal Government departments propose establishment of similar courses in Queensland and, possibly, in other States. It was proposed that the Chairman contact key government people to urge fullest consultation with ALS organizations in the respective States and to offer ALRU assistance based on the experience of the two courses run in New South Wales.

ALS Staff Directory

The revised directory of ALS organizations and their staffs, prepared by Neil Rees, had been distributed with the April issue of the Aboriginal Law Bulletin.

N A I L S S

Neil Rees had supplied minutes of the 2-day conference of ALS organizations which had led to the establishment of the National Aboriginal and Islander Legal Services Secretariat. Copies had been provided to Lyall Munro Jr., as National Co-ordinator for NAILSS, for distribution to constituent organizations; alternatively ALRU would be willing to arrange distribution.

CUSTOMARY LAW

The question has been raised: what is to happen to the material collected by the Australian Law Reform Commission after it publishes its final report, and what action can be taken to follow-up the report?

Professor James Crawford explained that ALRC is in no position to follow-up a reference after its work in preparing a report is completed. It is expected that the customary law report will be published early in 1984. Research papers published to date are numbers 1-6, 6A, 8-10, 13 and 14; those still to be published are 7, 11, 12 and 15, together with two further discussion papers.

It was decided to place these questions on the agenda for discussion at the September meeting of ALRU.

ALRU (Victoria)

Garth Nettheim reported on difficulties which had prevented the convening recently of meetings of ALRU (Victoria) and the need to find a new convenor who is not in practice or in government service.

WHITHER ALRU?

As foreshadowed in Aboriginal Law Notes No. 83/2 (April 1983), there was discussion at the meeting held on 14th June on the role and future of ALRU.

Robert Tickner, Principal Solicitor, Aboriginal Legal Service Ltd (Redfern) had written suggesting that the appropriate future for ALRU would be Aboriginal control through NAILSS.

At the meeting Richard Chisholm spoke to a paper he had prepared entitled "Whiother ALRU? A position paper" in which he raised questions about the purpose of ALRU, Aboriginal participation or control, the function of meetings, advertising ALRU, and the membership and structure of ALRU. David Weisbrot provided comments on Richard Chisholm's paper. Garth Nettheim, in a paper called "Whence ALRU?" provided information about the origins of ALRU and how it had come to be as it is and to operate as it does. He said that the impetus had come from Aboriginal organizations seeking assistance from the Law School in regard to particular issues. This, plus an awareness by several people of the value of "back-up" organizations in North America, led to a series of meetings and correspondence with Land Councils in 1979. In 1980 further discussions were conducted with Land Councils, ALS organizations and other organizations and individuals. The scheme for ALRU took shape during this time, and it was formally established within the University of New South Wales in April 1981. An Advisory Council network comprising over 100 addressees had been established, and all were kept informed of ALRU activity through Aboriginal Law Notes which had originated as minutes of meetings. He agreed on the importance of seeking maximum involvement of Aboriginal organizations and individuals in the work of ALRU.

(Copies of the above papers and comments can be provided on request).

After further discussion those present agreed on the following propositions:

- * Ideally, Aboriginal Law Research should be under Aboriginal control.
- * ALRU should encourage the development of research capacity in Aboriginal organizations.
- * ALRU should give priority to Aboriginal proposals for activity.
- * ALRU should attempt to set up Aboriginal steering groups for particular projects.
- * ALRU should continually inform Aboriginal organizations what it is doing, and why, and invite input.

The meeting also agreed that ALRU meetings should take on a different character. The imparting of information, reports, etc., would be best handled by publishing Aboriginal Law Notes shortly before meetings instead of shortly afterwards (the present practice). ALN would also notify an agenda of items for discussion and decision for the forthcoming meeting, and encourage input. Attempts would be made to focus meetings on a particular issue or a particular speaker.

Conferences, etc

Conference, National Federation of Land Councils at Aboriginal Advancement League Centre, 2 Watt Street, Thornbury, Melbourne, 28 July - 4 August, 1983. Contact: S.J. Murray at above address; phone (03) 480 6377

Symposia on Folk Law and Legal Pluralism, Vancouver, Canada, 19-23 August, 1983

"Aboriginals and International Law", ANU, Canberra, 21-22 November, 1983

Inquiries, etc

Parliament of Victoria, Social Development Committee, "Inquiry into Compensation for dispossession and disposal of the Aboriginal people". Submissions invited.

Correspondence

- from IWGIA (International Work Group for Indigenous Affairs, Copenhagen) proposing exchange of publications with ALRU and enclosing a list of some 44 published documents
- from Professor Douglas Sanders, University of British Columbia, Canada enclosing copies of papers to be published
- with Neil Rees in North America and England on various matters
- from Stuart McGill enclosing three papers from PNG, and from New York
- from Human Rights Commission, invitation to tender for consultancy service on a handbook for Australian educators on "White Racism".
- from bureau of the Northern Land Council stating that they are unable at this stage to provide funding for proposed project on resource development negotiations
- with Grey Lyons about Aboriginal Law Bulletin and his resignation as co-editor
- to Lyall Munro Jr. enclosing minutes of national ALS conference November 1982
- to Guboo Ted Thomas, Wallaga Lake about procedure for registration as marriage celebrant
- with Paul Chartrand, University of Saskatchewan, Canada about ALRU publications
- to Richard Batlett, University of Saskatchewan, Canada, about his papers on mining and sacred sites
- with Kim Wilson in Clyde Holding's office
- to Barbara Glowczewski of Survival International (Paris) about Australian resources for S.I. work
- with Peter Bayne and Nugett Coombs in Canberra about proposed conference on Aboriginals and International Law
- with SA Institute of Technology about course materials "Aboriginals and the Law"
- various further requests for copies of papers by Meredith Wilkie and Michael Hogan

Publications, etc. received

Survival International (London). Information Packs on:

"Australia: Land rights in New South Wales"

"Brazil: Pataxo Ha-Ha-Hai"

"Australia: Queensland Land Legislation"

Aboriginal Land Rights Support Group Newsletter No. 20 (April 1983)

Aboriginal Treaty News No. 7

International Work Group for Indigenous Affairs (IWGIA), Copenhagen,

Robert Paine "Dam A River, Damn a People? Saami (Lapp)

Livelihood and the Alta/KautoKeino Hydro-Electric Project and
the Norwegian Parliament" (IWGIA Document 45)

Nicolas Inigo Carrera "Violence as an Economic Force: the process
of proletarianisation among the indigenous people of the Argentinian
Chaco, 1884-1930" (IWGIA Document 46)

IWGIA Newsletter No. 31-32, June-October 1982

Land Rights Wrongs, special edition of Land Right News published by
the Northern Land Council, Darwin

Report of the Working Party on the Protection of Aboriginal Folklore
(4 December 1981), Department of Home Affairs and the Environment,
Canberra

The Monash Orientation Scheme for Aborigines (MOSA) Prospectus
(September 1982)

Douglas Sanders "The Rights of the Aboriginal Peoples of Canada"

Douglas Sanders "The Re-Emergence of Indigenous Questions in International
Law"

Stuart McGill "Project Financing the OK Tedi Mine - A Government Perspective"

Stuart McGill "Some Issues for Governments when formulating mineral
agreements"

Stuart McGill "Bougenville to Vanimo: Using Negotiating Strategy to
Implement the Eight Point Plan and National Goals in Papua New
Guinea"

John Terry, report on Staff Training Programme, pilot project 1982 for
Central Australian Aboriginal Legal Aid Service

"Legislation Relating to Land for Aborigines" resolution passed by the
Legislative Assembly of the Northern Territory, 24 November 1982,
and appendices