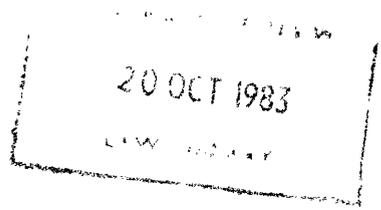


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ABORIGINAL LAW NOTES

No. 83/6

September, 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, 18 October, 1983,
at the conference room, Australian Law
Reform Commission, level 7, 99 Elizabeth
Street, Sydney.

Speaker: James Crawford will speak about the
Symposium on Folk Lore and Legal Pluralism
held in Canada in August, and about proposals
that a future Symposium be held in Australia.

Also for discussion: Aboriginal customary law - the future of the
project (and the holdings) after the ALRC
produces its report.

Any member of the Advisory Council who happens to be in
Sydney is welcome to attend meetings of the Unit.

The ABORIGINAL LAW RESEARCH UNIT is located in the Faculty of
Law, University of New South Wales, P.O. Box 1, Kensington,
N.S.W., 2033, Australia. Chairman, Garth Nettheim:
Tel. (02) 663-0351, Extension 3266.

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.

PLEASE NOTE:

Suscriptions for 1983-1984 are now due. (Organizations with whom
ALRU has an "exchange of publications" arrangement are exempt).
Please advise if you need more than one copy of Aboriginal Law
Notes.

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LAST MEETING - 20 September 1983 at Aboriginal Legal Service, Chippendale.

Matters discussed included NAILSS delegation to Geneva and London; proposed Sydney conference of Aboriginal Legal Services; inquiry by House of Representatives Standing Committee on Aboriginal Affairs into the effects of asbestos mining on the Baryulgil Community; Field Officers' Training Course; DAA inquiry into Aboriginal Legal Services; and the recent South Australian case Gerhardy v Brown.

ABORIGINAL LAW BULLETIN

Issue No. 9 to appear in October. Deadline for Issue No. 10 is 18 November.

PUBLICATIONS

Human Rights for Aboriginal People in the 1980s should be available in October. See page 4 below.

ABORIGINAL LAND RIGHTS LAW IN NEW SOUTH WALES

Meredith Wilkie is revising her study. Attempts to find a publisher are proceeding.

INQUIRIES

Media notices on two inquiries of current interest are reproduced below.

The Parliament of the Commonwealth of Australia



House of Representatives Standing Committee
on Aboriginal Affairs

Inquiry into the effects of Asbestos Mining on the Baryulgil Community

The House of Representatives Standing Committee on Aboriginal Affairs has been asked to inquire into and report on:

1. the effect of asbestos mining on the Aboriginal people who lived and/or worked at Baryulgil with particular reference to:
 - (a) the conditions under which Aboriginals worked in the asbestos mine and processing plant; and
 - (b) factors which contributed to any health risks associated with the mine and crushing plant, and the nature, adequacy and enforcement of safety measures to minimise such risks.
2. measures to protect and promote the health and welfare of the Aboriginal people who may have been affected by the Baryulgil mining operations.
3. provisions currently available to secure just compensation for individuals who have been adversely affected by the mining and processing activities at Baryulgil, and measures necessary to overcome any inadequacies in those provisions.

It is the intention of the Committee that the Inquiry be open to all interested parties.

Inquiries and written submissions are invited from organisations and individuals interested in placing evidence before the Committee.

Submissions and inquiries should be addressed to the Secretary, House of Representatives Standing Committee on Aboriginal Affairs, Parliament House, Canberra, A C T. 2600. (Telephone (062) 72 6770.) The closing date for submissions is 4 November 1983.



ATTORNEY-GENERAL'S DEPARTMENT REVIEW OF

Racial Discrimination Act

The Attorney-General has established a Task Force on Human Rights to advise him on implementation of the Government's policies for new and amending legislation in this field.

One of the functions of the Task Force will be to review the Racial Discrimination Act 1975 and report to the Attorney-General on desirable amendments.

The Task Force would welcome contributions from the public and special interest groups on the operation of the Act.

Major issues for consideration include:

- Dealing with race-hatred propaganda;
- The operation of enforcement mechanisms;
- The relationship between the Act and Aboriginal land rights legislation.

Submissions on these or any other issues relating to the Racial Discrimination Act should be forwarded, by October 30, 1983, to:

Gae Pincus,
Secretary,
Task Force on Human Rights,
Attorney-General's Department,
Robert Garran Offices,
CANBERRA ACT 2600

Further information may be obtained by telephoning (062) 71 9448.

CORRESPONDENCE:

- from Prof. Brad Morse, Ottawa, enclosing material, and generally.
from Survival International, London, copies of correspondence with Clyde Holding about their Information Pack on Land Rights legislation in NSW; also copies of correspondence with B.P. about Roxby Downs.
with Andrew Crocker of Survival International, and Gary Hiskey of ALRM, Adelaide, about Roxby Downs.
from Philip Alston, U.N., Geneva, about second session of Working Group on Indigenous Populations; similarly from World Council of Churches Program to Combat Racism, Geneva, and Professor David Weissbrodt enclosing his report on the session to Amnesty International.
from NAC concerning ALRU briefing on Working Group on Indigenous Populations.
from Graeme Neate, concerning study of NT land rights legislation.
from P. Rinaudo, Queensland, a student seeking general information about land rights; similarly from P.S. Glanville, Armidale.
from Professor D.E. Sanders, Vancouver, enclosing articles, and generally.
from Ministry of Aboriginal Affairs, NSW, about international law materials.
from DAA Parramatta about consultative conferences for 1984-1985 funding program.
from Marion Dixon and Professor R.W. Harding, University of Western Australia about teaching materials on Aborigines and the Law; similarly from Heather McRae, University of Adelaide.
from Greg McIntyre, Cairns, concerning co-ordination of Queensland Aboriginal Legal Services.

REPORTS, etc. received:

- Aboriginal Land Rights Support Group Newsletter, Vol. 21 (August 1983).
Robert S. Allen, Native Studies in Canada: A Research Guide 1982.
Bradford W. Morse, "Land Rights and Customary Law: A Comparative Analysis" 1983
Report of the Working Group on Indigenous Populations on its second session.
Summary of Report of the Working Party on the Protection of Aboriginal Folklore.
D.E. Sanders "The Long Road to a Fresh Start? The First Ministers' Conference on Aboriginal Rights" (1983).
D.E. Sanders "The Indian Lobby", chapter 15 in S. Banting And No One Cheered (Methuen, 1983).
Survival International, London, Information Pack "Philippines: Military Repression against Tinggian Tribespeople".
Two Hundred Years Later..., Report by the Senate Standing Committee on Constitutional and Legal Affairs on the feasibility of a compact, or 'Makarrata', between the Commonwealth and Aboriginal people (AGPS, 1983).

HUMAN RIGHTS FOR ABORIGINAL PEOPLE IN THE 1980's

"...Aboriginal people will continue the struggle. Whether we get compensation today, whether we get land rights tomorrow, whether we get the treaty tomorrow, the fight will still go on. And the longer the fight goes on the better we are becoming equipped at it".
(Paul Coe)

These edited proceedings of a weekend conference present, in brief but vivid form, the views of leading speakers on a number of issues of current concern to Australia's Aboriginal people. These issues include:

- Australia's international obligations (of increased significance since the Franklin Dam case);
- Aboriginal land rights;
- Recognition of customary law;
- The proposed Treaty or Makarrata.

Speakers include:

Gough Whitlam	Neville Bonner
Jim Hagen	Gary Foley
Daniel Rowland	Keith Suter
Peter Baume	Susan Ryan
Pat O'Shane	Ken Maddock
Bruce Debelle	Chris Kirkbright
Pam Ditton	David Weisbrot
H.C. Coombs	Michael Dodson
Bryan Keon-Cohen	Paul Coe

The conference was arranged by:

International Commission of Jurists (Australian Section),
Aboriginal Law Research Unit, and
Faculty of Law, University of New South Wales

with financial support from

The Law Foundation of New South Wales

The book will be published at the end of September at \$8.50 per copy. Copies may be ordered from:

Legal Books Pty. Ltd.,
39 Martin Place, Sydney. N.S.W. 2000

ALRU BRIEFING PAPER

SEPTEMBER 1983

THE SECOND SESSION OF THE WORKING GROUP ON
INDIGENOUS POPULATIONS

20 OCT 1983

David Weissbrodt *

The Working Group on Indigenous Populations of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities met for its second session, 8 August -12 August, 1983.

Attendance

In principle, the Working Group's membership for the second session should have been the same as for its first session in August 1982: Mr. Eide of Norway, Mr. Toshevski of Yugoslavia, Mr. Mudawi of Sudan, Ms de Sousa of Panama and Mr. Saker of Syria, but Mr. Mudawi of Sudan was ill and Ms de Sousa did not appear because she was an alternate and the expert from Panama, Mr. Ritter, arrived only in time for the plenary session of the Sub-Commission which began 15 August. Furthermore, Mr. Saker of Syria was also responsible for attending the second World Conference to Combat Racism and Racial Discrimination, which was occurring simultaneously in the Palais des Nations. Accordingly, only Mr. Eide, the Chairman, and Mr. Toshevski, attended with any regularity.

In contrast, there were more indigenous peoples and governmental observers present at the Working Group sessions than in the previous year. The Sami of Scandinavia were represented for the first time; there was a substantial delegation of Aboriginals from Australia, as compared with one Aboriginal last year. There were only two Indians of South Americas last year; this year there were several more. Among the governments sending observers were Australia, Brazil, Canada, Mexico, Netherlands, Nicaragua, Norway, Peru, Sweden (represented by a Sami), the United States and Venezuela.

Methods of Work

The Chairman proposed and the Working Group agreed at the beginning of the session that the Working Group attempt to organize itself so that the Group would consider standard setting in the morning meetings and hear more specific facts as to "developments" in the afternoon. The Chair also proposed a five year plan for the period 1984-89, which would stress different subjects each year as to standard setting. After extensive discussion, the Working Group settled on the following plan with no fixed number of years to complete its deliberations:

* David Weissbrodt teaches international human rights law at the University of Minnesota, U.S.A.

1984, 3rd session of the Working Group: (a) land and other natural resources; (b) definition of indigenous populations, including registration:

List of preliminary priorities for the subsequent sessions of the Working Group

- (probably 1985) right of indigenous populations to develop their own culture, traditions, language and way of life, including the right to freedom of religion and traditional religious practices.
- right to autonomy and self-determination, including political representation and institutions; the duty of indigenous populations, as of all others, to respect and apply universal human rights.
- right of education.
- right to health, medical care and other social services.
- right to legal assistance and protection in administrative and judicial affairs.
- right to association.
- right to social security and labour protection.
- right to trade and to maintain economic, technological, cultural and social relations.

This revised plan for the Working Group is indicative only, and the sequence may be changed at later sessions. Each year, among "other matters" themes not listed here may be taken up. Under "review of developments" any issue may be taken up. It is expected that protection of the right to life, to physical integrity and security of indigenous populations will be discussed each year.

Standard Setting

Although there were hints last year that certain subjects would be stressed during the 1983 session, there was no clear decision on this approach and very few of the indigenous groups came prepared to discuss standard setting problems.

There was some discussion about the alternative objectives of the Working Group. Several possibilities were identified: a multilateral convention on the rights of indigenous peoples, a declaration, draft principles, or merely guidelines for the Working Group's own deliberations. Some indigenous peoples favoured a convention because it would give them legal rights. Others recognized that there is insufficient international consensus on the relevant issues and that treaty drafting is very difficult, time-consuming and hazardous to the principles one may wish to see included. As an interim measure the majority of the indigenous peoples hoped the Working Group would at least adopt guidelines such as those introduced last year and/or the somewhat more ambitious draft proposed this year by the International Indian Treaty Council E/CN.4/Sub.2/AC.4/1983/5/Add.2 (1983).

Developments

Most of the indigenous participants arrived with complaints which they wished to make about their treatment. The Working Group has decided not to become a "chamber of complaints"; it is not equipped to hear evidence or to render judgments. Nevertheless, it can receive information relating to "developments" affecting indigenous peoples and to encourage dialogue between the indigenous participants and the governments concerned. Indeed, the governments of Australia, Canada, Mexico and the United States felt the need to make responsive statements which offered some hope of continued dialogue at the national and international levels. Indeed, the new Australian government made statements which could be interpreted as promises of improvement. Mexico was represented by a professor who made very progressive statements - almost certainly not representative of his government's position. Even Brazil was not openly hostile to the Working Group. Peru took a hard line position when faced by rather strong attacks by indigenous representatives of a group which would like to recreate the Inca empire. (Peru was threatening privately to challenge the decision of last year to permit indigenous peoples to speak on their own behalf instead of through recognized non-governmental organizations in consultative status). India and Bangladesh argued that the Hill Tribes were not indigenous peoples within the mandate of the Working Group, but the issue will not be resolved until at least next year when the definition will be discussed further.

The Chairman allowed several exchanges on each situation - thus giving both sides an opportunity for dialogue. (NGOs do not ordinarily have a right of reply in UN meetings, but Eide was rather informally permitting such a right of reply).

If the indigenous participants are better prepared in future years, there is a chance that the Working Group can foster meaningful dialogue at the international level and at the national level between indigenous peoples and states.

Voluntary Fund

Last year the Working Group proposed the creation of a UN Voluntary Fund for Encouraging Participation of Indigenous Populations in the sessions of the Working Group. The Sub-Commission passed this idea to the Commission. The Commission responded that it needed some more specifics on the proposal. The Working Group discussed the Voluntary Fund. The indigenous representatives wanted to participate in the decisions of who should receive monies to participate in the Working Group. It is possible that an interim advisory committee might be established of all the non-governmental organizations which have indigenous constituencies and consultative status. Such an advisory committee would meet without UN financial support, so as to avoid exhausting the resources of the Fund. Next year the indigenous participants might meet to determine if a better structure might be established.