

Below are the statements by the NZ government's representative, delivered to the Third Committee, UN General Assembly, on 16 October 2006 - firstly on the Declaration on the Rights of Indigenous Peoples; and below that, on 'Mission to New Zealand', the report of Rodolfo Stavenhagen, Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples.

UNGA THIRD COMMITTEE, 61st SESSION

ITEM 64 (a) - THE DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

STATEMENT BY H.E. AMBASSADOR ROSEMARY BANKS

ON BEHALF OF AUSTRALIA, NEW ZEALAND AND THE UNITED STATES

16 OCTOBER 2006

Mr Chairman, this statement is made on behalf of Australia, New Zealand and the United States of America.

The Working Group charged with drafting a declaration on the rights of indigenous peoples was unable to reach a consensus on a text. The text adopted by vote by the Human Rights Council in June was prepared and submitted after the negotiations had concluded. The Chair of the negotiations has acknowledged, on several occasions, that his text does not in fact enjoy consensus. Equally disappointing, there has been no opportunity for States to discuss this new Chair's text collectively. We are also concerned that the Human Rights Council and its President rejected calls that we and others, such as Canada, made urging for more time to improve the text so that it could enjoy universal support. This process is extraordinary in any multilateral negotiation and sets a poor precedent with respect to the work and role of the Human Rights Council.

Mr Chairman, in order for a declaration to provide States and indigenous peoples with a blueprint for harmonious and constructive relationships, it must be clear, transparent and capable of implementation. Unfortunately, the text before us fails on all three counts. It will risk endless and conflicting interpretations and debate in its application. That is apparent both from the text of the declaration and from the interpretative statements that were made when the text was adopted at the Human Rights Council and from those that are likely to be made at the adoption of the declaration by the General Assembly.

Mr Chairman, we worked hard for a declaration that could become a tangible and ongoing standard of achievement that would be universally accepted, observed and upheld. The situation in some countries for indigenous peoples is very worrying indeed. What the world needs is a declaration that can make a practical and positive difference in the lives of indigenous peoples in every region. Instead, the text before us is confusing, unworkable, contradictory and deeply flawed. Mr. Chairman, our countries therefore cannot support its adoption.

- Self-Determination. For example, Mr Chairman, the provisions for articulating self-determination for indigenous peoples in this text inappropriately reproduce common Article 1 of the Covenants. Self-determination in the Chair's text therefore could be misrepresented as conferring a unilateral right of self-determination and possible secession upon a specific subset of the national populace, thus threatening the political unity, territorial integrity and the stability of existing UN Member States. The provision regarding territorial integrity and political unity was also inappropriately removed from the Chair's text.
- Veto Power? The text also appears to purport to confer upon a sub-national group, a power of veto over the laws of a democratic legislature. Indigenous peoples in our countries can already fully and freely engage in our democratic decision-making processes. But, our governments cannot accept the notion of creating different classes of citizenship. To give one group in society rights that take precedence over those of others could be discriminatory under the Convention on the Elimination of Racial Discrimination. While the Convention does allow States to take special measures, the power to do so is discretionary, and cannot be used to take measures that are unlimited in duration.
- Lands & Resources. Mr Chairman, the provisions on lands and resources in the text before us are also equally unworkable and unacceptable. They ignore the contemporary realities in many countries with indigenous populations, by appearing to require the recognition of indigenous rights to lands now lawfully owned by other citizens, both indigenous and non-indigenous. Such provisions would be both arbitrary and impossible to implement.
- Universality of Human Rights. Other important provisions in the Chair's text are potentially discriminatory. It seems to be assumed that the human rights of all individuals, which are enshrined in international law, are a secondary consideration in this text. The intent of States participating in the Working Group was clear that, as has always been the case, human rights are universal and apply in equal measure to all individuals. This means that one group cannot have human rights that are denied to other groups within the same nation-state.
- Redress. The provisions for providing redress, even for those few countries that are addressing this imperative, are unworkable and contradictory.
- Lack of Definition of "Indigenous Peoples". Mr Chairman, we cannot accept the argument some are making, disingenuously, that this declaration will only apply to countries that have significant or obvious indigenous populations. There is no definition of "indigenous peoples" in the text. The lack of definition or scope of application within the Chair's text means that separatist or minority groups, with traditional connections to the territory where they live – in all regions of the globe - could seek to exploit this declaration to claim the right to self-determination, including exclusive control of their territorial resources. And this text would allow them wrongly to claim international endorsement for exercising such rights.

These fundamental flaws in the text leave us asking ourselves whether States have carefully examined the provisions, and have thought through all the ramifications within their own countries. And if they have, we wonder how they propose to reflect domestically the

provisions on the rights to traditional lands and resources, the right of self-determination, the rights to redress and the apparent veto on democratic decision-making, for example.

The flaws in this text, Mr Chairman, run through all of its most significant provisions. Because these provisions are fundamental to interpreting all of the provisions in text, the text as a whole is rendered unacceptable. We note as well that there are calls for State funding that are inconsistent with the role of elected governments to determine resources on the basis of need and not just ethnicity. And the provisions relating to the repatriation of human remains have been unacceptably contrived by some States allow them to maintain their holdings of indigenous remains and artifacts.

We have been reminded on many occasions that this declaration is an aspirational document and not legally binding in any way. That is indeed true, of course. But, we consider that indigenous peoples deserve and need a declaration that is clear, transparent, and capable of implementation and that represents a standard of achievement against which all States can be measured. This text fails all these tests.

Nor do we accept the claims some keep making that this outcome is as good as we could achieve. We were prepared to stay the distance in working further for a document that enjoyed genuine agreement, but others were not. Unfortunately, Mr. Chairman, this declaration will not encourage constructive relationships: on the contrary, it may lead to disputes, bitterness, and unfulfilled expectations on all sides. This is not the outcome we worked hard to achieve for over eleven years. It must also cast doubts over how the United Nations can advance the rights of indigenous peoples with any credibility in the future. But the real tragedy is that it is a sorry outcome for those indigenous peoples who most need it.

Finally, our position on this declaration does not mean that we shall - in any way - resile from the continuing pursuit of the rights of indigenous peoples, internationally and domestically

Mr Chairman, I thank you on behalf of Australia, New Zealand and the United States of America.

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UNGA THIRD COMMITTEE, 61st SESSION

ITEM 64 (b) - INDIGENOUS ISSUES

STATEMENT BY REPRESENTATIVE OF NEW ZEALAND

16 OCTOBER 2006

Mr Chairman,

We welcome the opportunity to comment on the Special Rapporteur's report on his visit to New Zealand in November last year. New Zealand is one of a small number of countries

that has issued a standing invitation to all UN Special Mechanisms, and it is on that basis that the Special Rapporteur visited New Zealand.

The purpose of the Special Rapporteur's visit was to gain a better understanding of the situation of Maori, the indigenous peoples of New Zealand, through discussions with relevant stakeholders on a range of complex legal, political, cultural, economic and social issues.

The report was made available earlier this year and the Government of New Zealand has responded to it publicly, and also through the provision of comment to the Special Rapporteur during the process.

Our society is one that encourages open debate and the Special Rapporteur's report has led to considerable discussion in New Zealand. Maori, like all New Zealanders, live in a contemporary democracy that is, by any standards, participatory and inclusive. We are privileged to be a multiethnic society, and discrimination is an anathema to New Zealanders. Arrangements in place for Maori take into account historical inequalities, and, as appropriate, encourage self-management. In our view, a delicate balance can and must be struck between measures that may be put in place specifically for indigenous peoples and the imperative to avoid creating different classes of citizenship. Our experience is that the two need not be mutually exclusive. Historical injustices must be addressed, but overall social and economic policies are best determined on the basis of need.

New Zealand is one of only a handful of countries with a significant indigenous population, which have taken the step of putting in place sophisticated mechanisms, mandated by law, to address historical and contemporary grievances. These are of great importance to Maori and to non-Maori New Zealanders. They have been identified by UN human rights treaty bodies as being exemplary.

Many of the matters raised in the report are central and enduring features of an important and ongoing political debate in our society. That debate is conducted widely and openly, and with respect for the rule of law and democratic institutions. It is premised on a fundamental belief in equal treatment under the law for all citizens, although there may be differing views on how this is best achieved.

To take one example, the report raises questions concerning possible constitutional change. There is a diverse range of opinion about this subject in New Zealand and at this stage there is no consensus for constitutional change. However, any agreed change will be brought about through the free and full exercise of democratic prerogatives by Maori and non-Maori alike.