

II. Sovereignty, Independence and Self-Determination

Sovereignty—East Timor

See discussion of this matter in Chapter V, "Territory" below.

Independence—Palau

On 1 October 1994, the Prime Minister, Mr Paul Keating, issued a press release announcing the extension of formal recognition to Palau, the last part to achieve full self-determination of the Trust Territory of the Pacific Islands, which was in turn the last United Nations Trust Territory to complete the process of self-determination.

Self-Determination of Indigenous Peoples—Meaning of Expression in International Instruments

During the course of the year, in further elaboration of earlier statements (see for example, *Aust YBIL* 1994, vol 15, p 393), Australia made a number of statements about its view of the meaning of the expression "self-determination" in international instruments, as it affects indigenous peoples. On 8 June 1994, Mr Gordon Bilney, as Minister representing the Foreign Minister, made a statement as follows (House of Representatives, *Debates*, 8 June 1994, p 1672):

Mr BILNEY—On Monday the honourable member for Tangney asked me a question, as Minister representing the Minister for Foreign Affairs, which read:

The Minister is aware that since 1982 the United Nations Working Group on Indigenous Populations has been drafting a Declaration on the Rights of Indigenous Peoples. At the 11th session of the working group, in 1993, the draft was recast so that it states that indigenous peoples have the right to self-determination, including the right freely to determine their political status. In other words, the draft declaration provides for indigenous peoples to have the right to secede from sovereign states and to form independent nations. Will the Minister confirm that while the draft declaration contains a provision to that effect the Government will not be supporting it in any international forum?

The Minister for Foreign Affairs has provided the following answer to the Honourable Member's question.

The Government supports the right of self-determination of indigenous peoples consistent with national sovereignty. This right was recognised by the Commonwealth and all State and Territory Governments in their response to the Royal Commission into Aboriginal Deaths in Custody.

At previous sessions of the United Nations Working Group on Indigenous Populations, the Australian delegation has called for the inclusion, in that part of the draft declaration dealing with self-determination, of a reference to the Declaration on Principles of International Law on Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.

That declaration states that self-determination "shall not be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity of sovereign or independent states", so long as the governments of those states are representative of their peoples as a whole. I note that that language was also included in Article 2 of the Vienna Declaration adopted by the World Conference on Human Rights in 1993.

The Declaration on the Rights of Indigenous Peoples is in draft form only at this stage and will be the subject of a thorough process of negotiation which we expect will take some years to complete. There will be ample time for careful consideration of all the issues and for input from interested parties both at the national level and at the international level. When the Declaration on the Rights of Indigenous Peoples is finally adopted, moreover, it will not be legally binding on any country but will rather be an aspirational document which establishes standards that governments throughout the world can work towards. Given that the process of consultation will not take place until the draft is finally adopted by the Sub-commission on Prevention of Discrimination and Protection of Minorities, the Government considers it premature to consider its final negotiating position in relation to this article and the declaration as a whole at this stage.

The following are extracts from a statement made by the Australian Delegation in the Sixth Committee of the UN General Assembly on 14 October 1994:

Mr Chairman,

Self-determination, as a distinct concept of international law, first arose following World War I and was influential in determining the shape of eastern Europe following the disintegration of the Austro-Hungarian and Russian Empires. Among the purposes of the United Nations outlined in its Charter is the development of "friendly relations among nations based on respect for the principle of equal rights and self-determination". That general principle was, during the period of decolonisation, properly used to support the granting of independence to colonised territories. Its status was recognised in a number of General Assembly declarations and, more significantly in international law terms, in Common Article 1 of the Human Rights Covenants, which state:

All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Mr Chairman,

There are differences of opinion as to whether the right of self-determination, once exercised through the attainment of independence from colonial domination, continues or has been extinguished. There is no doubt that the content of the right of self-determination remains somewhat uncertain. Australia, however, believes that the international community should view self-determination as a comprehensive human rights concept, the implementation of which is particularly important in an uncertain and transitional world situation. People's rights and international security will be diminished if the international community adheres to the view that the right of a country's people to self-determination is extinguished on its gaining independence. The right of self-

determination remains with a people after national independence, although other aspects will then come to the fore.

In Australia's view, self-determination should embrace not only "external" self-determination but also "internal" self-determination—equal rights, the continuing right of peoples to decide how they should be governed, the right of people as individuals to participate fully in the political process (particularly by way of periodic free and fair elections) and the right of distinct peoples within a State to make decisions on and administer their own affairs (relevant both to indigenous peoples and national minorities). In our view, this proposition finds support in the words of the Common Article 1 of the Human Rights Covenants, together with Article 21 of the Universal Declaration on Human Rights and Article 25 of the International Covenant on Civil and Political Rights.

A distressing feature of recent times has been the emergence of intra-State conflict as a major problem for international and human security. The available evidence strongly suggests that violent intra-State conflict is unlikely to decrease of its own accord in the near or mid-term future. Among the conceptual rethinking on the part of the international community that is needed in order to grapple with these serious security problems is a comprehensive and constructive interpretation of the concept of "self-determination".

Sovereign independence for every self-defined "group" is not the issue. The great majority of the world's States are ethnically diverse: indeed, only 20 percent are relatively ethnically homogenous. A large number of States have at least five sizeable ethnic populations. The ideal of ethnically pure States is therefore, in Australia's view, clearly unrealistic, and also contrary to the repeated statements of the international community in, for example, the Declaration on the Granting of Independence to Colonial Countries and Peoples (1960), the Declaration on Principles of International Law on Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations ("the Friendly Relations Declaration" of 1970) and the Vienna Declaration.

Australia believes that attempts actively to pursue such exclusive political arrangements lead only to the bloodshed and ethnic cleansing we have seen recently in the former Yugoslavia, the Caucasus and parts of Africa. Rather, the demands by peoples for internal self-determination, generally expressed as the maintenance of their cultural identity, including their language and spiritual beliefs, should be capable of accommodation by national governments. States such as Australia are striving to do so by way of policies of multiculturalism and of self-management for our indigenous peoples.

Australia's strong position is that the right of self-determination, although important, is not a right above and beyond those other central rights set out in the Declaration and the Covenants. The right of self-determination therefore cannot be used to justify abuse of other rights such as the right to life, the right to freedom of conscience and expression or the right to an adequate standard of living.

Mr Chairman,

The content of the right of self-determination has assumed particular importance with the proclamation last year of the UN Decade of the World's Indigenous People and the finalisation by the Sub-Commission of the Draft Declaration on the Rights of Indigenous Peoples.

Article 3 of the Draft Declaration states, using the language of the Covenants cited earlier, that indigenous peoples have the right of self-determination. It is Australia's view, however, that any equation of such a right of self-determination with a right to independence on the part of most indigenous peoples would be contrary to precepts of territorial integrity.

The dispossession (and loss of sovereignty) of indigenous peoples generally occurred without their consent. Further, with few exceptions indigenous peoples did not participate in designing the constitutional order of the States into which they were incorporated. Indigenous peoples see the right of self-determination as a mechanism to enable them to negotiate their political status and to consent to the terms of their future relationships with the States in whose territories they live.

Indeed, to suggest that indigenous self-determination is an inevitable threat to the territorial integrity and national unity of states is to ignore the fact that most indigenous peoples do not desire independent statehood. The proceedings of the Working Group on Indigenous Populations clearly show that most indigenous peoples take a functional approach to self-determination, seeking constitutional reform to enable them to develop their political institutions and to determine their own development within existing States.

Rather, Australia believes that for indigenous peoples the right to self-determination might involve other forms which are compatible with the continued existence, unchanged, of the nation State so long as it gives effect to the right of those peoples to take effective control of their own affairs. This can be done in various forms of federation, self-government, devolution, decentralisation and other governmental mechanisms for self-determination. A similar approach would be appropriate for minority peoples.

Australia's view is that the right of self-determination envisages self-management by indigenous peoples. In creating the Aboriginal and Torres Strait Islander Commission and the Torres Strait Regional Authority, Australia has endeavoured to confer upon its indigenous communities real control over their own lives and future and thus allow them to exercise, in a meaningful sense consistent with national sovereignty, their right of self-determination. The Aboriginal and Torres Strait Islander Commission and the Torres Strait Regional Authority, which are elected by Australia's indigenous peoples, exercise substantial control over the administration of programs designed to advance the economic, social and cultural well-being of Australia's indigenous peoples in areas such as health, education and housing.