

National Unity Government
of the
Sovereign Union of Aboriginal Nations and Peoples in Australia
(SUANPA)

**Self-Determination
and
Sovereignty
of
Aboriginal Nations and Peoples
Defined**

written by
© Michael Anderson
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Introduction

This is not a debate about the legitimacy of either or. This is a debate about the need to conclude a messy and genocidal history. It is about working together to get it right and to settle grievances and disputes in a fair and just manner.

It can become ugly, but only if the dominant society rejects outright our legitimate claim to continuing sovereignty and dominion over our lands, natural resources and the naturally occurring biodiversity.

Over the millennia conflicts have come and gone and always at the end settlements through negotiations are agreed to. This debate and confrontation can end just as easily as it started, but we must all agree to talk and negotiate in order to locate peaceful and lasting settlements if we are to become an Australian society unified in common purpose and cause, always respecting each other's background, religious beliefs and right to say NO to the destruction of Mother Earth. We can prosper with great effect if we commit to protecting Mother Earth, which must be one of our pre-negotiation agreements and commitments.

The substantive issues of our continuing sovereignty and dominion

1.00 The response of the NSW Governor's Office to my letter of 14 November 2011 was not surprising; in that letter I requested a copy of the NSW Proclamation of the 'Order in Council' in respect to Queen Victoria's recognition and affirmation of Aboriginal sovereignty and dominion over our lands.

In a letter dated 8 December, signed by the Official Secretary and Chief of Staff, Mr. Noel Campbell said that the Governor's Office does not keep records dating back to 1875, but advised that we should consult the NSW State Records Authority. He then concluded the next paragraph by saying that both Acts were repealed by virtue of the Commonwealth Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999.

1.01 In response, I wrote the following:

I am well aware of the Commonwealth Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999. I can only assume that given your response, the New South Wales Attorney-Generals have failed to inform you of the international law relating to conventional practices and international laws that preclude one State from repealing an Act of another sovereign parliament. Moreover, the Commonwealth Criminal Code Amendment Slavery and Sexual Servitude Act of 1999 merely repealed the Pacific Islanders Protection Acts of 1872 and 1875 respectively so that they are no longer on the public records.

1.02 This I can understand. However, the purpose and intent of each of these Acts and their effects remain and have not been affected.

Treaties and the import of new law/laws

Furthermore, the New South Wales Attorney-General's office has also failed to inform you of the Australian High Court decision in 'Minister of State for Immigration and Ethnic Affairs v Teoh' [1995]. At the conclusion of this High Court's ruling, there was a joint press release and published in all the print media throughout Australia, part of which said:

1.03 *“JOINT STATEMENT BY THE MINISTER FOR FOREIGN AFFAIRS, SENATOR GARETH EVANS, AND THE ATTORNEY-GENERAL, MICHAEL LAVARCH*

10 May 1995

INTERNATIONAL TREATIES AND THE HIGH COURT DECISION IN TEOH

This statement is to clarify the Government's position following the High Court's recent decision in the Teoh Case. That decision concerned the way in which administrative decisions are made under the Migration Act but could have implications for the way the provisions of a treaty may operate in Australian law generally.

Prior to the High Court decision, it was established that ratification of a treaty did have some, albeit limited, significance in Australian domestic law - the treaty provisions could be used to resolve an ambiguity in legislation; could provide guidance on the development of the common law, particularly where the treaty declared universal fundamental rights, and could quite properly be taken into account in the exercise of a discretion by a decision-maker under legislation without the decision being invalidated as a result.

However, it was also clearly established in a succession of High Court cases that treaties entered into by the Australian government, while creating rights and duties as a matter of international law, did not form part of Australia's domestic law unless and until they had been so incorporated by legislation, and could not give rise to rights and obligations unless they were so enacted into law.

The High Court reaffirmed in Teoh that provisions of treaties do not form part of Australian law unless they have been incorporated by legislation. At the same time, however, the Court developed a new way in which treaties could affect some administrative decisions. The High Court held that merely entering into a treaty could give rise to a legitimate expectation that government decision-makers would make decisions consistently with Australia's obligations under the treaty. It was not necessary for any legislation governing the decision to refer to the treaty. Indeed the provisions of the treaty could apply even where the person affected by the decision did not raise - or even know about - the treaty in question. This was the case in Teoh itself, where the Court decided that there was a legitimate expectation that the decision maker under the Migration Act would take the relevant Article of the Convention on the Rights of the Child into account in coming to a decision not to give resident status, notwithstanding that the applicant did not know about the Convention and the decision-maker did not raise it.

It may be only a small number of the approximately 920 treaties to which Australia is currently a party that could provide a source for an expectation of the kind found by the High Court in Teoh. But that can only be established as individual cases come to be litigated. In the meantime, the High Court decision gives little if any guidance on how decision makers are to determine which of those treaty provisions will be relevant and to what decisions the provisions might be relevant, and because of the wide range and large number of decisions potentially affected by the decision, a great deal of uncertainty has been introduced into government activity. It is not in anybody's interests to allow such uncertainty to continue.

For that reason, the Government is taking action to restore the position to what it was understood to be prior to the Teoh Case.

This action is of the kind foreshadowed by the High Court itself. In its judgment, the Court acknowledged that the expectation in question can be displaced by 'statutory or executive indications to the contrary': there can be no legitimate expectation if the actions of the Parliament or the Executive are not consistent with that expectation. So far as the Executive is concerned, the Court made it clear that it was open for Government to make a statement about the effect that the obligations undertaken in international law by reason of treaty ratification are intended to have in the domestic law of Australia.

We now make such a clear and express statement. We state on behalf of the Government, that entering into an international treaty is not reason for raising any expectation that government decision-makers will act in accordance with the treaty if the relevant provisions of that treaty have not been enacted into domestic Australian law. It is not legitimate, for the purpose of applying Australian law, to expect that the provisions of a treaty not incorporated by legislation should be applied by decision-makers. Any expectation that may arise does not provide a ground for review of a decision. This is so, both for existing treaties and for future treaties that Australia may join. The Government intends to legislate to reinforce this statement and put beyond any doubt the status of these unlegislated international obligations. We will be seeking approval for the necessary legislation to be introduced into Parliament later in these sittings. In the meantime, this statement has been issued to avoid, to the fullest extent possible in the circumstances, the inevitable uncertainty flowing from the High Court decision.”

I have included this statement because it raises a number of key issues.

- 1.4.1 On the question of assimilating a set of rights into Australian law, there can be NO doubt nor question as to the intent and purpose of sections 7 and 10 of the Pacific Islanders Protection Acts 1872 and 1875 in respect to Britain’s recognition of the “independence of Aboriginal sovereignty and dominion over our places (land)” and its application to the state colonies at the time.
- 1.05 I base this statement on a legal fact. When we read section 7 of the text of the original and real Pacific Islanders Protection Act 1875, clearly there are no ambiguities. A copy of this document is located on the records in the Office of the Parliamentary Counsel at Whitehall, London. To quote:

Nothing herein or in any such Order in Council contained shall extend or be construed to extend to invest her Majesty and her heirs and successors with any claim or title whatsoever to dominion or sovereignty over any such islands or places as aforesaid, or to derogate from the rights of the tribes or people inhabiting such islands or places, or of chiefs or rulers thereof, to such sovereignty or dominion, and a copy of every such Order in Council shall be laid before each House of Parliament within thirty days after the issue thereof, unless Parliament shall not then be in session, in which case a copy shall be laid before each House of Parliament within thirty days after the commencement of the next ensuing session.

- 1.06** During my visit to London in December to locate the original copy of the Pacific Islanders Protection Acts 1872 and 1875, its bills and its purpose, I was advised that with respect to an ‘Order in Council’, it is in itself “absolute law” when it comes from the monarch exercising their ‘prerogative powers’. In this regard it is important to know that an ‘Order in Council’ can come from two sources;
1. From the advice of the Lords Spiritual and Temporal, and Commons to the monarch, or
 2. by the reigning monarch exercising of the royal ‘prerogative’.
- “An ‘Order in Council’ becomes “Absolute Law” within the common law of the places [colonies] where it is intended to be applicable.”
- 1.07** Therefore, unlike a treaty, the Pacific Islanders Protection Acts of 1872 and 1875 respectively both having their genesis in the British parliament and by the ‘Order in Council’ of the reigning monarch became part of the domestic law of the colonies in New South Wales, Victoria, South Australia, Tasmania, Queensland and Western Australia, as well as New Zealand and other islands in the Pacific where Britain was exploring and laying claim to the various dominions.
- 1.08** For the purposes of this debate it is essential to understand and have cognizance of the effects of the Colonial Laws Validity Act 1865 (28 & 29 Vict. c. 63). This is an Act of the parliament of the United Kingdom. Its long title is "An Act to remove Doubts as to the Validity of Colonial Laws".
- 1.09** (i) As stated in the internet by the group, “*The purpose of the Act was to remove any apparent inconsistency between local (colonial) and British ("imperial") legislation. Thus it confirmed that colonial legislation (provided it had been passed in the proper manner) was to have full effect within the colony, limited only to the extent that it was in contradiction with ("repugnant to") any Act of Parliament that contained powers which extended beyond the boundaries of England to include that colony. This had the effect of strengthening the position of colonial legislatures, while at the same time restating their ultimate subordination to the Westminster Parliament.*
- (ii) *Until the passage of the Act, a number of colonial statutes had been struck down by local judges on the grounds of repugnancy to English laws (whether or not those English laws had been intended by Parliament to be effective in the colony).*
- (iii) *By the mid-1920s it was accepted by the British government that the Dominions would have full legislative autonomy. This was given legislative effect in 1931 by the Statute of Westminster which repealed the application of the Colonial Laws Validity Act to the dominions (i.e. Canada, the Irish Free State, New Zealand and Newfoundland, and the Union of South African State).*
- (iv) *The Statute of Westminster took effect in Australia in 1942 with the passing of the statute of Westminster Adoption Act 1942 with retroactive effect to 3 September 1939, the start of World War II. The Colonial Laws Validity Act continued to have application in individual Australian States up until the Australia Act 1986 came into effect in 1986.”*
- 2.00** It certainly would not be in the interests of the federal and or state/territory governments to attempt to argue that each of the colonial states failed to proclaim the law (‘Order in Council’) arising from the Pacific Islanders Protection Acts, because the Order in Council is prescriptive and unequivocal. At this time the governors were responsible for carrying

out all such ‘Orders in Council’, according to the Letters Patent which calls upon the appointed Governors of the States to call together a parliament. The Letters Patents are the only authority that gives Australian States and Federal Governments their legitimacy. In this case the Governors were and continue to be an extension of the English monarch by proxy, which placed a legal obligation on them to have these 1872-75 Acts proclaimed in each of the colonial states.

Separation of powers

- 2.01** The Australia Act of 1986 clearly establishes the formal separation of powers between Australia and the United Kingdom’s parliament and the UK’s legal institutions, amongst other things.
- 2.02** The fundamental legal principle established by the Australia Act 1986 is that after the coming into effect of this Act it says at section 3. (2) *“No law and no provisions of any law made after the commencement of this Act by the parliament of a State shall be void or inoperative on the grounds that it is repugnant to the laws of England, or to the provisions of any existing or future Acts of the parliament of the United Kingdom or to any order, rule or regulation made under any such Act, and the powers of the parliament of a State shall include the power to repeal or amend any such Act, order, rule or regulation in so far as it is part of the law of the State .”*
- 2.03** In respect of repeals of the Pacific Islanders Protection Acts, the Australian federal government along with each of the states and territories as a consequence of the 1986 Australia Act can now repeal an Act of the British parliament that remains on and in Australian statutes. In the case of the Pacific Islanders Protection Acts of 1872-75 the Australian federal government has repealed both Acts so that in 1999 they were no longer on the public records. But the effects of the Pacific Islander Protection Acts remain law.
- 2.04** This is confirmed from the study of each of the repeals both in the United Kingdom and Australia of the Pacific Islanders Protection Acts of 1872 & 75 as the legal effects are and have been preserved.
- 2.05** The problem that the Australian parliaments have, however, is their inability to diminish the legal effects of the original Act from Britain despite Australia gaining its autonomy from the British parliament and its legal institutions. The Australia Act of 1986 did not alter the purpose and effects of the intent of the laws that came from England during the colonial period. In fact our Sovereignty and Dominion continues to be preserved.
- 2.06** Unlike an international treaty, the Pacific Islanders Protection Acts 1872-75 do apply to each of the states identified in the Act and there is no reason why it would be necessary to have a debate about “legitimate expectations”. The terms of the Acts, intended for each of the Australian colonial states including New Zealand through the ‘Order in Council’ constitute absolute law and the fact that there is a specific ‘Order in Council’ at section 10 of the same Pacific Islanders Protection Acts 1872-75 to have it proclaimed within each of the colonial states and New Zealand sets apart any arguments that may arise in respect of its intended purposes to apply to Australian and New Zealand domestic law.
- 2.07** So what does this mean for Australia and New Zealand? It is my interpretation that if we are to follow the reasoning of former Foreign Affairs Minister, Gareth Evans, and his

counterpart, the Attorney-General, Michael Lavarch MP, it is of NO consequence as to whether the parliaments of the states failed to introduce their own laws in respect of the confirmation of Aboriginal sovereignty and dominion over their places. It is a legal fact that the Pacific Islanders Protection Acts 1872-75 created unequivocally and in unambiguous terms the law that Aboriginal sovereignty and dominion over us and our places are and continue to be universal in English common law, a law that had to be observed by each of the colonial states.

- 2.08** The Pacific Islanders Protection Acts of 1872-75 were not a set of laws that could be left up to the exercise of discretion of the leadership of each of the states. The Pacific Islanders Protection Acts were laws that were themselves created by the same parliament and monarchy that gave each of the Australian states and the federal government their own legitimacy without a revolution as happened in the United States of America. Unfortunately this permits leaders like the former prime minister, John Howard, to say, “Australia was a country that developed by peaceful settlement”, which in turn permits the Australian state and federal governments to suppress the true history of the Aboriginal resistance and the violence that went with this resistance and that to this day continues, in particular the violence from the states themselves.

A question of repeal

- 2.09** On the question of the law today, given that each of the Pacific Islanders Protection Acts of 1872 and 1875 have now been repealed both in England and Australia.

- 3.00** Let me first address the repeals that have occurred in the English parliament.

- a)** When we read the Statute Law (Repeals) Act 1986. {1986 Chapter 12} we must have legal cognizance of the following text therein.

Paragraph one says, “*An Act to promote the reform of the statutes law by the repeal in accordance with recommendations of the Law Commission and the Scottish Law Commission, of certain enactments which (except in so far as their effects are preserved) are no longer of practical utility, and to make other provision in connection with the repeal of those enactments.*” [2nd may, 1986]

- b)** Paragraph 2 states; *BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in the present Parliament assembled, and by the authority of the same as follows-*

Part 2 at (4) of page 1, establish the following; “Subject to Subsection (3) (which deals with the repeal of The dentist Act 1878 and Medical Act 1886 only) above, this **Act does not repeal any enactment so far as the enactment forms part of the law of a country outside the British Islands; but Her Majesty may by Order in Council provide that the repeal by this Act of any enactment in the Order in Council shall on a date so specified extend to any colony**”.

- 3.00** It is therefore imperative that we as sovereign Aboriginal nations have particular cognizance of the English parliament’s Statute Law (Repeals) Act 1986. [1986 Chapter 12] and I emphasise that which is cited above:

An Act to promote the reform of the statutes law by the repeal in accordance with recommendations of the Law Commission and the Scottish Law Commission, of certain enactments which (except in so far as their effects are preserved) are no longer of practical utility, and to make other provision in connection with the repeal of those enactments. [2 May 1986]

- 3.01** I now address the John Howard government's repeal of the Pacific Islanders Protection Acts of 1872-75. Australian Parliamentary Hansard 1999 recorded that the Pacific Islanders Protection of 1872-75 Acts were of no further use and should no longer be on the public records. It needs to be noted that this repeal does nothing to affect the continuing sovereignty and/or dominion as there are no specific sections and/or clauses that have impact, impairment or the suggestion of the abolition of these lawfully recognized rights.

The Australian Act 1986 and Australian independence

- 3.02** The principal difference between the Commonwealth and UK versions of the *Australia Act* lies in the reference, appearing in the long title and preamble to the Commonwealth version but not present in the UK version, to Australia as "a sovereign, independent and federal nation. While this might be understood as a declaration of independence, it can also be understood as an acknowledgement that Australia was already independent, leaving open the question of when independence had been attained. There is no earlier declaration or grant of independence".
- 3.03** At no material time has any of these alterations, amendments, repeals and/or declarations, etc, mentioned the abolition of the continuing sovereignty of our people nor has any law been created to rescind Aboriginal dominion over our lands, waters, natural resources and the naturally occurring biodiversity of our lands and waters.
- 3.04** It is my submission that Australian does in fact recognise Aboriginal sovereignty and acknowledge that Aboriginal laws continue to be a part of our society and accepted by the Australian State. This is evident from the Australian Government Centrelink claim form for ABSTUDY where at question 16. They ask: What is your CURRENT relationship status? In one of the multiple answers to this is a statement that says Married or recognised as married under Aboriginal/Torres Strait Islanders law. Clearly this is an acknowledgement of Aboriginal Law/Lore which is continuing to this day. It is therefore difficult for the Governments to deny this as fact.
- 3.04** From this analysis I propose the following considerations:
- 1 (a) At what point does the Australia Act of 1986 and/or any other law or known 'Order in Council' diminish the legal recognition of Aboriginal sovereignty and takes away by law our dominion over our lands, water, nature resources, gas, oil and our biodiversity naturally occurring within and throughout our dominions if there are no specific words to this effect?

If they did this then our question is, where, when and how did we lose our sovereignty and dominion?

- 3.05** If this question can be answered and the law/laws are identified then we ask the following questions:

1. On what date did this happen?
2. What are the terms of this/these law/laws?
3. Where are the prior and informed consent treaty/treaties?
4. What, if any, compensation and/or restitution has been agreed to by all parties?
5. Along with all the other questions that do come to mind that are too many to list here and what where are the Treaty agreements that identify that Aboriginal people are now part of and subject to the Australian legal systems.

Before going on to highlight our rights that are guaranteed under international law through UN resolution, I wish to conclude that the Australian government has, in fact, recognised that our Laws/Lores are continuing and this is confirmed in the Australian Government's Centrelink Application claim form (b) ABSTUDY where at question 16, they ask 'what is your current relationship status?' One of the multiple choice answers is 'Married or recognised as married under Aboriginal/Torres Strait Islander Law'. There is nothing more to be said on this point. I now draw attention to those sections of international law that have their genesis in the United Nations that supports and establishes the legal rights of our Peoples to assert our sovereign independence and to choose, amongst ourselves how we shall govern and/or be governed.

THE RIGHT OF SELF-DETERMINATION and AS SOVEREIGN NATIONS AND PEOPLES

Before the term Self-Determination came into common usage, it was known as the Right of Revolution, a principle of 'self-help, without other states having the right to assist'.¹ This is also the right to a Just War and the use of force to fight for freedom; the right to freedom from the tyranny of the state.²

In the mid 1880s the concept of self-determination emerged as 'the right of the group', when in 1848 'Polish, Italian, Magyar and German peoples claimed self-determination based on the right of a people to nationhood...a right to sovereign independence – to not be ruled by a foreign power.'³

The First World War was referred to as a war of self-determination by Asquith on 5 February 1920.⁴ When the United States of America President Woodrow Wilson championed 'the cause of the oppressed nationalities' in Europe fighting for their liberation from tyranny, he stated:

1 Iorns, Catherine, 1992, *Indigenous Peoples and Self-Determination: Challenging State Sovereignty*, Case West Res. Journal of International Law, June, p.197.

2 Morgan, 1988, *The Imagery and Meaning of Self-Determination* 20 International Law and Politics, pp. 355-357.

3 Iorns, Catherine, 1992, *Indigenous Peoples and Self-Determination: Challenging State Sovereignty*, Case West Res. Journal of International Law, June, p. 169

4 *ibid* p. 11.

We are fighting for the liberty, the self-government, and the undictated development of all peoples.... No people must be forced under sovereignty under which it does not wish to live.⁵

The Allies' aim was the liberation of all people then governed by the 'foreign powers' of the Austro-Hungarian, Ottoman and Russian Empires. 'The dramatic breakthrough in the development of self-determination as the leading principle of the allied policy came with the collapse of the Russian Empire and the subsequent institution of a new Russian government avowedly committed to the principle of national self-determination... The final catalyst in this development was the entry of the United States into the war.'

President Wilson persuaded 'the allied powers into an official policy endorsing the principle of national self-determination.'⁶ At the end of world war I President Wilson's famous comment was:

No peace can last, or ought to last, which does not recognise and accept the principle that governments derive all their just powers from the consent of the governed, and that no right exists to hand people about from sovereignty to sovereignty as if they were property.⁷

The actual phrase self-determination has its origins with the German philosophers of the 1940s used the terms *selbstbestimmung* or *selbstbestimmungsrecht* when arguing for self-rule during the occupation of Germany.⁸

During the second world war the United States of America had refrained from being engaged in this military conflict. It is a well-known fact, however, that the British Prime Minister, Winston Churchill, was in touch with the President of the United States, Franklin Roosevelt and the correspondence demonstrates that Churchill was seeking America's assistance in defending the British homelands. It is now history that America did become involved and formed a major part of the D-Day battle that turned the tide of the war. One of Franklin Roosevelt's conditions for joining the war was that he, on behalf of the people of America, informed Prime Minister Churchill he would not become involved unless Britain agreed to end their colonialism, that is, asserting a foreign power on another country. Interestingly enough in agreeing to this condition and agreeing to the Atlantic Charter of 1941 Churchill commented with words to the effect of, 'I will not be remembered for my achievements in the war efforts but, instead, I was the Prime Minister who presided over the breaking up of the British Empire.'

The Atlantic Charter of August 14, 1941 read:

The President of the United States of America and the Prime Minister, Mr. Churchill, representing His Majesty's Government in the United Kingdom, being met together, deem it right to make known certain common principles in the national policies of their respective

5 Message from President Woodrow to Russia, June 9, 1917, in A. Cobban, 1970, *The Nation State and National Self-Determination*, pp.104-5.

6 Ofuatey-Kodjoe, W. 1977, *The Principle of Self-Determination in International Law*, pp. 73-74.

7 U.S. Cong. Rc. vol. 54, Pt.2, p. 1742 in Ofuatey-Kodjoe, W. 1977, *The Principle of Self-Determination in International Law*, p. 79.

8 Umorzurike, U. 1972, *Self-Determination in International Law*, p. 1.

countries on which they base their hopes for a better future for the world.

First, their countries seek no aggrandizement, territorial or other;

Second, they desire to see no territorial changes that do not accord with the freely expressed wishes of the peoples concerned;

Third, they respect the right of all peoples to choose the form of government under which they will live; and they wish to see sovereign rights and self government restored to those who have been forcibly deprived of them;

Fourth, they will endeavor, with due respect for their existing obligations, to further the enjoyment by all States, great or small, victor or vanquished, of access, on equal terms, to the trade and to the raw materials of the world which are needed for their economic prosperity;

Fifth, they desire to bring about the fullest collaboration between all nations in the economic field with the object of securing, for all, improved labor standards, economic advancement and social security;

Sixth, after the final destruction of the Nazi tyranny, they hope to see established a peace which will afford to all nations the means of dwelling in safety within their own boundaries, and which will afford assurance that all the men in all lands may live out their lives in freedom from fear and want;

Seventh, such a peace should enable all men to traverse the high seas and oceans without hindrance;

Eighth, they believe that all of the nations of the world, for realistic as well as spiritual reasons must come to the abandonment of the use of force. Since no future peace can be maintained if land, sea or air armaments continue to be employed by nations which threaten, or may threaten, aggression outside of their frontiers, they believe, pending the establishment of a wider and permanent system of general security, that the disarmament of such nations is essential. They will likewise aid and encourage all other practicable measure which will lighten for peace-loving peoples the crushing burden of armaments.

Franklin D. Roosevelt

Winston S. Churchill

The Atlantic Charter has since been the cornerstone for the decolonisation processes that have occurred around the world. International law Professor Thomas Franck confirms how fundamental the concept of self-determination is:

...self-determination is the oldest aspect of the democratic entitlement...Self-determination postulates the right of a people in an established territory to determine its collective political destiny in a *democratic fashion and is therefore at the core of democratic entitlement.⁹

It is our understanding that the birth of the United Nations after the Second World War was couched in the premise for the need to maintain World Peace and Harmonious human relations and, in order to achieve this ambition, the UN established and enshrined a charter stating their purpose and objectives.

During the development of UN Charter those responsible failed to include an Article on the Rights of the First Nations Peoples, when President Woodrow Wilson of the United States of America had previously enunciated a fourteen-point strategy, which was of international political significance. Included in his proposal was a specific Article for the recognition of the rights of the First Nations Peoples. It said:

...require all new States to bind themselves as a condition precedent to their recognition as independent or autonomous States, to accord to all racial or national minorities within their jurisdiction exactly the same treatment and securities, both in law and fact, that is accorded the racial or national majority of their people.³

It was ultimately rejected as a result of the strenuous opposition from the British delegates. This was caused in turn by the 'adamant stand' of the colonial Australian and New Zealand Prime Ministers, who were concerned that the 'propriety' of the treatment of their Aboriginal and Maori populations might come under scrutiny.

The United Nations in the 1950s acknowledged that 'self-determination' was a right of all peoples and nations; a right which was eventually set out in common Article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

As early as 1952 the United Nations General Assembly linked the rights of First Nations Peoples to decolonization:

...the rights of peoples and nations of self-determination is a prerequisite to the full enjoyment of all fundamental human rights... take practical steps, pending the realization of the right of self-determination and in preparation thereof, to ensure the direct participation of the indigenous populations in the legislative and executive organs of government of those territories, and to prepare them for complete self-government or independence.¹⁰

The practicalities of this approach meant that after the second world war the concept of self-determination was narrowed and many minorities found themselves within other nation states, who wanted to avoid dismemberment into 'impossibly small parochial entities',¹¹ preferring to

9 Franck, T. 1992, *The Emerging Right to Democratic Governance*, 86 Am. J. Int'l L. 46, p.52.

³ President Woodrow Wilson's Draft Convention, in Reynolds, Henry, 1996 *Reflections on Race, State and Nation*, Allen and Unwin. St. Leonards, Sydney.

¹⁰ United Nations General Assembly Resolution 637 A (VII) 16 December 1952.

¹¹ Buchheit, L.C. 1978, *Secession: The Legitimacy of Self-Determination*, p. 64.

comply with existing 'historical claims, economic needs and military and strategic arguments'.¹² As became apparent the geopolitical and strategic interests of the Great Powers overrode the demands for self-determination of the Peoples concerned, unless those demands were consistent with the Great Powers aspirations. An agreed definition of self-determination was never worded. We are still witnessing the folly of this approach with the recent wars in Europe. Even today self-determination and sovereignty are not defined.

The UN General Assembly resolution 1541, Principle VI, regarding non-self governing territories allows for 'a full measure of self-government' and independence is the favoured outcome to avoid control by the administering state. Mililani Trask¹³ from the sovereignty movement of Hawaii warned against becoming a non-self governing territory as a means of gaining independence, because, as she explained, there is no clear mechanism to end the control of the administering state, which, in her People's case, is the United States of America.

The Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 Dec 1960 states:

The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of co-operation and world peace...all peoples have an inalienable right to complete freedom, the exercise of their Sovereignty, and the integrity of their national territory.¹⁴

The prohibition on the use of force to deny self-determination was first declared in the UN General Assembly resolution 2160 (XXI), 30 November 1966, 98-2-8:

...forcible action...which deprives peoples under foreign domination of their right to self-determination [external or internal] ...constitutes a violation of the Charter.

After the second world war, the United Nation's urgent quest for world peace are in the name of:

We the peoples of the United Nations...¹⁵

and

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. In no case may a people be deprived of its own means of subsistence...

is the first article of the International Covenant on Civil and Political Rights (ICCPR)¹⁶ and of the International Covenant on Economic, Social and Cultural Rights (ICESCR).¹⁷

12 Rigo Sureda, A.1973, *The Evolution of the Right of Self-Determination*, p. 21.

13

14 UN General Assembly Resolution 1514 [xv]

15 UN Charter

16 UN General Assembly Resolution 2200A (XXI) of 16 December 1966, entered in to force in Australia 23 March 1976

It is understood that force may be used to defend against denial of self-determination, but this was not stated clearly until 1970 in the Declaration on Friendly Relations that established the principles of equal rights and self-determination of peoples:

Every State has the duty to refrain from forcible action which deprives peoples...of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and receive support in accordance with the purposes and principles of the Charter.

But the 1970 Declaration on Friendly Relations advocates forms of government beyond those detailed in Principles VII-IX of United Nations General Assembly Resolution 1541.¹⁸

In UN General Assembly resolution 2625 (XXV) 24 October 1970 called:

The Declaration on Principles of International Law concerning friendly relations and co-operation among States in accordance with the charter of the United Nations (A 8082)

is the principle of equal rights and self-determination of peoples:

Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying the responsibilities and entrusted to it by the Charter regarding the implementation of the principle announced in order;

...

(b) to bring about a speedy end to colonialism, having due regard to the free and expressed will of the peoples concerned;

and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter.

...

The establishment of a sovereign and independent State, the free association or integration with an independent state or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.

...

The territory of a colony or other Non-Self Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self Governing Territory have exercised their right to self-determination in accordance with the Charter, and particularly its purposes and principles.

¹⁸ UN General Assembly Resolution 2200A (XXI) of 16 December 1966, entered into force in Australia on 3 January 1976.

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any actions which dismember or impair, totally or in part, the territorial integrity or political unity of sovereign independent States conducting themselves in compliance with the principles of equal rights and self-determination of peoples as described above, and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.

On 30 November 1995, the United Nations Economic and Social Council appears satisfied that First Nations Peoples' concerns are adequately dealt with by Article 1 of the Charter of the United Nations. That is;

...The development of friendly relations among nations based on respect of the principle of equal rights and self-determination of peoples.

To permit the Australian Government's submission to have any legitimacy at all, when they say:

...Australia considers that self-determination encompasses the continuing right of peoples to decide how they should be governed.'¹⁹

is of great concern and this position of the Australian government cannot be left to stand for them to deny our rights as Peoples, based on the existing resolutions of the United Nations, as cited. There was enormous difficulty in the Working Group of the Commission of Human Rights to Elaborate a Draft Declaration on the Rights of Indigenous Peoples for Article Three, the right to self-determination, to be endorsed by the UN nation states. In fact Australia was a key country opposing the inclusion of Article Three, supported by the other members of the CANZUS alliance, Canada, New Zealand and the United States of America.

During the laborious drafting process, we protested:

Are we not the *Free Peoples* of the world, or does the United Nations view First Nations Peoples as a different and lesser class of Peoples?

Is it not the Charter of the United Nations to insure that Human Rights and Freedoms are extended to all Peoples to be observed and adhered to and consistent with the enunciated Article 1 of the Covenant on Economic, Social and Cultural Rights;

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

Because of the continuing Australian deceit and denial as to our inherent rights, it is no wonder that the Australian Governments during the drafting process remained by seeking to prevent being extended to the Aboriginal Peoples.

But the United Nations is an association of member nation states, which each recognise each other's sovereignty. Their common denominator is that the majority acquired their power and status through military might and the genocide of First Nations Peoples, with whom they came into contact with during the colonial imperial expansion. Unfortunately, we, the tribal Peoples of the Earth, residing within the UN nation states' boundaries, are having to appeal to the nation state that over ran over Peoples and lands.

19 [Statement by Mr. Bill Barker on Behalf of the Australian Delegation. Nov. 21, 1995]

There can be no doubt that our appeals to the United Nations will be fraught with constant opposition, because as First Nations Peoples our appeals do, in fact, impact upon the territorial integrity and political unity of those nation states. There can be no doubt that the United Nations will have to formulate new policies and procedures in respect to the UN member states to commence a process of true and meaningful internal decolonization by following the principles cited in the resolutions herein.

The UN Special Rapporteur, the late Professor Alfonso Martinez, also harboured no doubts concerning the much-debated issue of the right to self-determination: First Nations Peoples, like all Peoples of the Earth, are entitled to this inalienable right.²⁰

Self-determination is not restricted to full independence. There is a continuum of freedoms available and a range of choices. It is the right of the People concerned to *choose* which form of self-government, autonomy or independence they aspire to. It can also be an evolving process so that freedoms are gained in incremental stages.

As Professor Rudolfo Stavenhagen concludes:

...the denial of self-determination is essentially incompatible with true democracy. Only if peoples' right to self-determination is respected can a democratic society flourish...²¹

As recently * as April 2000 the UN Commission on Human Rights re-stated the underlying principle for world peace and good order in Resolution 2000/62:

...a democratic and equitable international order requires, inter alia the realization of the following rights:

- (a) The right of all peoples to self-determination, by virtue of which they can freely determine their political status and freely pursue their economic, social and cultural development...²²

In the preceding Resolution 2000/40 the UN Commission on Human Rights emphasised that:

20 Martinez, M.A. 1999, *Study on treaties, agreements and other constructive arrangements between States and Indigenous populations, [sic = peoples]*, Commission on Human Rights, Sub-Commission on the Prevention of Discrimination and Protection of Minorities, UN Doc E/CN.4/Sub.2/1999/20, 22 June 1999 para 256.

21 Stavenhagen, R. 1966, 'Self-Determination: Right or demon?' in D. Clark & R. Williamson, (eds), *Self-Determination: International Perspectives*, St Martin's Press, New York, 1, p. 8.

22 *Promotion of the right to a democratic and equitable international order*, E/CN.4/RES/2000/62, 27 April 2001, para. 3.

...political platforms ...based on racism...or doctrines of racial superiority and related discrimination must be condemned as incompatible with democracy...and that racial discrimination condoned by government policies violates human rights...

Thus international law acknowledges that there is also a creative process at work and in this way it is the right of First Nations Peoples to determine their own political status, even if this form of government has not been previously recognised by the United Nations. In fact, this is getting close to the crux of the issue because First Nations Peoples already have ancient systems of government, Law/Lore and economy handed down through time, but it was the colonising powers who denied the existence of this sacred process and, instead, subjugated and denigrated the First Nations Peoples.

But now the Earth, our Mother, is stirring and First Nations Peoples across the globe are feeling a new sense of empowerment and the diverse cultures and peoples are re-energising, rising up in defense of our Mother Earth; knowing that unless this happens our Earth is finished. It is the combined energies of First Nations Peoples with non-Aboriginal supporters who can break the shackles of trans-national corporate globalisation, militarism, nuclear cycle and state sovereignty. First Nations Peoples are having to find ways of re-expressing the 'Voice of the People', which for too long has been silenced by the dominant powers and an obstructionist media outlets. Destruction of the Earth and genocide against First Nations Peoples have become accepted norms by dominant populations living in denial of the reality which surrounds them.

With establishment of the World Trade Organization through Free Trade Agreements and the corporatizing of governments, the territorial integrity, which nation states so desperately cherish and protect is now compromised. It is important to understand that Aboriginal Peoples, like the remainder of the nation state's population have never been consulted by the governments, to gain the peoples' free, prior and informed consent to have their country's territorial integrity compromised in the name of commerce and trade. This act by governments and those who participate in it is treasonous and a fraud against its population.

For each of the nation states to argue that the First Nations Peoples' claim of right through self-determination is a threat to their territorial integrity is an hypocrisy of monumental proportions.

In conclusion, we need to have special note of the fact that the resolutions cited above are in themselves part of the international law that all member states have pledged to observe and these rights are greater rights in law than the second class rights in the UN Declaration on the Rights of Indigenous Peoples.

Moreover, the 1875 *Pacific Islanders protection Act* section 7 is, and always has been, law within the common law system since 1875. This is an English law, not a United Nation law, or law of any other jurisdiction and it is our duty to have the English enforce their own law for the benefit of our Peoples and of future generations.

In pursuing our ambitions to achieving self-determination, we must now commit ourselves to each other to create a national unity, as this is the only way by which we can achieve our future ambitions and free ourselves from the yoke of tyranny.

WHAT AND WHERE TO FROM HERE

THIS IS OUR CHOICE

Actions

There are many forms and type of actions that we could take and initiate, but this is something that I recommend we do and that is to unite as a national unity government by committing to the formation of the Sovereign Union of Aboriginal Nations and Peoples in Australia (SUANPA) led by the National Unity Government, which must be created by ourselves under our terms. To do otherwise will be detrimental to all of us as Sovereign Peoples and Sovereign Nations.

Signed

Michael Anderson
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