



SPEECH TO THE SENATE ABOUT THE PROPOSED UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

By Senator Mathias Cormann on 10 September 2007

[Senator CORMANN](#) (Western Australia) (4.53 p.m.)—Mr Acting Deputy President, I also rise to contribute to this debate today. Let me say at the outset that I support the view that the Australian government should only support the adoption of the proposed United Nations Declaration on the Rights of Indigenous Peoples if it is in our national interest to do so and if it is in the interests of indigenous people. For that to be the case we require some of our outstanding concerns to be addressed. In fact, when it comes to human rights instruments like this one it is the norm, and quite appropriately our preference, that they be adopted by consensus to ensure broad support. At this point it is very clear that consensus has not been reached. Indeed, it is our view that the current text has been put forward much too hastily for adoption by the Human Rights Council. That is obviously disappointing, and hopefully some more work can be done to reach that consensus between now and when the ultimate vote is taken—although at this stage it would appear that that is rather unlikely.

By way of general comment let me say that we need a declaration that is focused on making a real, positive difference in the circumstances of indigenous people. I share the view that we need a declaration that is clear, transparent and capable of implementation. Our concern is that the current text is confusing and would risk endless and conflicting interpretations and debate in its application. There are a series of very specific concerns, and some of them have been mentioned in the debate so far.

Firstly, there is a concern in relation to the provisions about self-determination. Let me read to you current article 3 of the text as it stands:

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

Self-determination has significant meaning in public international law, and we are quite appropriately concerned that references to it in the current text could be misconstrued as conferring the right of secession upon indigenous peoples. Let me read out to you a definition of the principle of self-determination:

The principle of self-determination, often seen as a moral and legal right, is that every nation is entitled to a sovereign territorial state, and that every specifically identifiable population should choose which state it belongs to, often by plebiscite. It is commonly used to justify the aspirations of an ethnic group that self-identifies as a nation toward forming an independent sovereign state, but it equally grants the right to reject sovereignty and join a larger multi-ethnic state.

Senator Moore mentioned that self-determination in this context does not mean that indigenous peoples would seek to exercise their right to self-determination by way of a separate entity. Well, if it does not mean that, why does it say so in the current text of the declaration? If it does not mean that, why wouldn't we

clarify the text and amend it such that a broader consensus can be reached? Those are questions that will need to be answered.

We also have very serious concerns about the provisions in relation to land and resources. The current provisions on land and resources appear to ignore today's realities and we believe them to be unworkable and unacceptable. As they currently stand they would appear to require the recognition of indigenous land rights to lands now lawfully owned by other citizens, both indigenous and non-indigenous. In fact, it is our view that the text as it currently stands does not sufficiently recognise third-party rights—in particular, the rights of third parties to access indigenous land, heritage and cultural objects where appropriate under our laws. Another example of that relates to the inclusion of intellectual property rights. We do not support the inclusion of intellectual property rights for indigenous peoples in the text of the declaration. While we protect our Indigenous cultural heritage, traditional knowledge and traditional cultural expression to the extent that they are consistent with Australian and international property law, we will not provide *sui generis* intellectual property rights for Indigenous communities as envisaged in the declaration.

We are concerned also about the inclusion in the text of the declaration at present of what appears to be an unqualified right of free, prior and informed consent for indigenous peoples on matters affecting them. Senator Payne has talked about that. That provision would seem to imply that they may exercise the right of veto over all matters of state, including national laws and administrative matters. We do support the full and active engagement of indigenous peoples in democratic decision-making processes, but no government can or should accept the notion of creating different classes of citizenship.

Finally, we do not support the text as it currently stands which would appear to place indigenous customary law in a superior position to national law. Customary law is not law in the sense that modern democracies use the term; it is based on culture and tradition and should not override national laws. Very specifically, I strongly support the view that customary law should not be used selectively as an excuse to permit the exercise of practices by certain indigenous communities which would be unacceptable in the rest of the community.

A suggestion was made that the text is aspirational and not legally binding. While that is true, the position put forward by Australia, New Zealand and the United States is that we need a text that is capable of implementation and that represents a standard of achievement that various countries can be measured against. In summing up, previous speakers on the government side have made the point that this is a declaration that we would like to be able to support. It is very clear that at this stage a consensus has not been reached. We very strongly encourage all of the relevant states that are participating in the consultations and negotiations to do everything that they can to reach that consensus between now and 13 September—or even after that if that is necessary. But at this point in time, I support the proposition that it is not in our national interest or in the interests of Indigenous people for Australia to support the adoption of the proposed declaration in its current form.