

Full House Dissects Declaration on the Rights of Indigenous People

Indigenous Experts, International Figures Talk About Implementing the Declaration in Australia

By Senthuren Mahendren

The 2007 United Nations' Declaration on the Rights of Indigenous Peoples will have an effect on Australia's international obligations even though our nation voted against it, according to the Director of the Human Rights Commission's Social Justice Unit, Darren Dick. Mr Dick, speaking at a recent Castan Centre symposium held to discuss the Declaration and its likely impact in Australia, compared its possible long-term impact to that of the Universal Declaration of Human Rights, which is widely considered to constitute part of customary international law despite a number of nations voting against it in 1948.

The conference, organised by Castan Centre Deputy Director Melissa Castan, attracted a full house of lawyers, activists, academics, public servants and students. In addition to Mr Dick, a number of experts dissected the Declaration, which was passed by the UN General Assembly in September 2007 after over two decades of often torturous negotiations. Over 140 nations voted in favour of the Declaration with the CANZUS group of Canada, Australia, New Zealand and the United States of America voting against it, and a small number of countries abstaining. The Rudd Government stated, in the lead up to the 2007 Federal election, that it would endorse the Declaration, although it is yet to do so.

The first two guest speakers, Professor Michael Dodson and Mr Les Malezer, focused on the Declaration from an international perspective. Professor Dodson outlined the holes in the Western legal system regarding Indigenous rights. The Declaration fills in the vacuum that exists in these legal systems according to Professor Dodson, who raised as an example the failure of Western Law to protect the intellectual property of Indigenous people. Traditionally, Western intellectual property laws are more individualistic, whereas Indigenous intellectual property is communal and passed from generation to generation.

Mr Malezer, Chairperson of the Foundation for Aboriginal Islander Research Action, was present throughout the negotiation of the Declaration, and was the co-ordinator of the Global Indigenous Caucus that lobbied extremely hard for the Declaration. Mr Malezer highlighted that the Declaration made the rights and interests of Indigenous people a matter of international concern, and blunted the argument of those who claim that Indigenous rights are purely a domestic issue.

The final wording of the Declaration was inevitably a compromise, but according to Mr Malezer this is its greatest strength. The Declaration was hammered out after much dialogue between Indigenous people and nations, including the four CANZUS states. The greatest areas of contention were the right of self-determination and the rights to land and other natural resources. While Mr Malezer found the issue of the rights to land and resources to be still unclear, he said that the Declaration brought about a consistent international definition for self-determination, which was found to be a collective right.

Professor Brad Morse, of the University of Ottawa's Faculty of Law and one of the leading Canadian academics in Indigenous rights, outlined the arguments put forward by the Canadian government against the Declaration. Professor Morse systematically rebutted each point.

The final two speakers, Mr Dick and Mr Peter Seidel, provided the audience with a domestic outlook on the Declaration. Mr Seidel, the Public Interest Law Partner at Arnold Bloch Leibler, in reply to a question from the audience, stated that the Declaration's power derives from its amalgamation of the rights that had previously existed in a number of legislative acts.

Mr Dick elaborated on his claim that the Declaration will have an effect on Australia even before the Government formally expresses its support for it. As a General Assembly resolution, the Declaration carries weight in international law and affects Australia's international obligations concerning Indigenous rights. In particular, Victoria's *Charter of Human Rights and Responsibilities Act 2006* requires that Australia's international obligations be considered when developing, interpreting and applying Victorian law and policy. Similarly, Mr Seidel noted the precedent set by *Minister of State For Immigration and Ethnic Affairs v Ah Hin Teoh*, which requires Government decision-makers to take account of such international instruments. He also noted, however, that the rights under the Declaration are not justiciable in Australian courts unless formally adopted by law.

Mr Dick emphasised the need to educate both the Indigenous and broader communities about the importance and meaning of Indigenous rights. Traditionally, Indigenous rights have been seen by the broader community as negatively impacting on the rights of others. It is this type of thinking that we as a society must aim to extinguish if Australia is to become free from the shackles of social injustice. While the Declaration does have great potential to improve the state of Indigenous rights both domestically and internationally, ultimately it is how we use this Declaration that will decide the future impact on Indigenous rights.



Professor Brad Morse addresses the DRIP Conference while Professor Mick Dodson and Mr Les Malezer look on.