

REVIEW ARTICLE*

THINK LOCALLY, ACT GLOBALLY

Indigenous Peoples, the United Nations and Human Rights edited by SARAH PRITCHARD, (Zed Books, London, and The Federation Press, Sydney, 1998) pp xi +243. Softcover recommended retail price \$29.95 (ISBN 1 86287 259 7).

I.

Australia is not yet accustomed to the internationalisation of indigenous policy and politics. Two issues in this weekend's newspaper illustrate the point.

One is the revelation that Prime Minister Howard and his political tacticians intend to wind back the definition of Aboriginality ('Howard's black backlash', Sydney Morning Herald, August 8, 1998). This is said to be a response to Pauline Hanson's One Nation movement which centres its message on the scapegoating of Aborigines. One of Australia's few internationally admired policies in respect of Aborigines has long been its realistic definition, unlike the arbitrary and narrow ones in, eg, Canada's old Indian Act. The Canadian definition has caused much personal grief, hardship, and tragedy, creating whole classes of human misery.

Now it seems that the Howard in-group have decided that playing to ignorant notions that Aboriginality is simply a matter of degrees of blackness of skin and 'traditional' lifestyle will play well with a certain type of voter. Who knows – perhaps some of the political smart-asses figure that if it has been fun to divide the white community, why not create some fun dividing indigenous peoples?

The second issue is Northern Territory statehood. In the mid-1980s some NT individuals, notably chief minister Steve Hatton, began working towards statehood in a sensible way. They had a legislature committee, held meetings, had studies done, etc. However, the flaw in the thing was that the desired goal was the statehood of 1901, the kind that swept Aborigines and Torres Strait Islanders out of sight. If nothing else, the NT is today, even after the ravages of cattle, other hard-hoofed critters, and a little genocide in times past, a patchwork

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of Aboriginal peoples and territories. They are a very permanent population between one quarter and one fifth of the population, owning half the land. That is, their extensive historical land use and occupation are recognised to some extent in land matters.

Alaska in the 1950s, Canada's Northwest Territories until the late 1970s, Yukon till 1985, and Russia till almost the present have faced the same issues. Unlike Australia or its Northern Territory, however, they have been coming up with different answers. National political leaders there have recognised that unlike the good old days of frontier brutality, today's values require that indigenous cultures and territories be protected in law and recognised in political structures. Rather than being brushed aside by whites they must be recognised as constituent peoples and political entities with the country.

This may take different forms. It might mean indigenous-run, indigenous autonomous territories as is being proposed in Russia, and as has been given considerable force already in Alaska. It may mean re-writing northern territory¹ constitutions with indigenous peoples to make them full partners, or creation of a new territory as in Nunavut where Inuit are a large majority but other residents have full political rights. In the Yukon an indigenous claims settlement with components for local indigenous self-government was added on to the existing constitution.

In Australia, despite several major Aborigine-organised conferences and conventions on the political future of the NT, the official statehood movement continued along its old 1901 route. Have we really learned nothing in a century about indigenous-white relations? Soon after the NT official work began, another stream developed in Australia, one which favoured recognition and inclusion in constitutional documents. One could say that it began rather earlier, with the movement for a national treaty. At any rate, the failure of the 1988 bicentenary of white settlement put an end to attempts to relegate Aborigines and Islanders to the back of the bus, one had thought.

The NT statehood push is a return to the bad old days. The federal government will transfer peoples and their lands from one jurisdiction to another against their will. This would be denounced by Australia if done in another country. It is a simple and straightforward politico-moral issue. So is the redefinition of peoples to conform to spiteful labelling or stereotyping by members of the majority society. In fairness, it is unlikely that federal power circles have thought in such terms. That is a large part of the problem.

II.

Sarah Pritchard's book of papers by various hands is timely and important. It brings to Australians the hard edge of international law and process concerning

¹ Northern territories are a category of hinterland regions where ethno-cultural, resource management, political power and legitimacy issues of conflict with the national majority and its governments are endemic.

indigenous peoples. It is not only informative, but is designed to be a resource for persons with concerns in the field. It provides back-up and context to the international material in national indigenous ombudsman Mick Dodson's five annual reports, 1993-97, and the articles and documents published in University of New South Wales' several law journals.

On the other hand, the book works equally well as an introduction to international law in general, with the problem of indigenous peoples, originally invisible to the United Nations system, serving as a case study in how it all works. My concern here is the first way of reading it, however.

Australia's Aboriginal Social Justice Commission has now been wound back. It has been made plain to indigenous Australians in many explicit and implicit terms that they are to be recognised in decorative rather than political ways. Even the new appointees of the Howard government to high indigenous and rights offices have quickly embarrassed the government by resisting its downgrading of their functions. It is precisely in and for such situations that international procedures and formal bodies represent a major potential resource and recourse.

If the international community have been slow to react to the Howard government's indigenous agenda it is flattering to Australia. Governments and NGOs (non-government organisations) around the world have been so used to Australia playing a constructive role in human rights work that they have found it hard to believe that times could change so dramatically. After all, in 'first world' countries we had all come to think of rights and cultural accommodation as a cumulative process – it might sometimes stall, but going back was unthinkable. Or so we thought.

Authors in this book note that Australia's ostentatious activism in international bodies has been matched by slipperiness at home. As Mick Dodson concludes his essential chapter on Australian indigenous politics in action at the UN:

I must say that the Australian government has been by far the most cooperative and supportive of any government represented at the Working Group. It is a pity that they don't bring that attitude back on the plane from Geneva.

That was written in 1995. However, that is not the whole of his view.

The Working Group has come to play a far more extensive role than its mandate would suggest. It is a fine example of how we [indigenous peoples] can use existing structures and transform them to meet our needs and aspirations. As the meeting place between the world's Indigenous peoples and key international organisations, the Working Group has provided many of us with a unique opportunity to interact with a world that would be otherwise impenetrable. We have made sure that it has functioned as a highly visible platform where we can draw attention to our grievances.

The energy generated each year in Geneva is astonishing. Anyone who attends returns with greatly expanded horizons. When Mick Dodson came back from his first visit he gave a public talk in Darwin still awed by the experience. Having talked to many indigenous peoples and advisers from several countries on their return, I know their feeling. In fact it is one of the great things about indigenous internationalism. As Mick Dodson puts it in this book:

I was sitting in a room, 12,000 miles away from home, but if I'd closed my eyes I could just about have been in Maningrida or Doomadgee or Flinders Island. The people wore different clothes, spoke in different languages or with different accents, and their homes had different names. But the stories and the sufferings were the same. We were all part of a world community of Indigenous peoples spanning the planet; experiencing the same problems and struggling against the same alienation, marginalisation and sense of powerlessness. We had gathered there united by our shared frustration with the dominant systems in our own countries and their consistent failure to deliver justice. We were all looking for, and demanding, justice from a higher authority. That famous phrase at the beginning of the UN Charter, "We the people of the United Nations", started to take form for me. I recognised that the people back home were part of the peoples of the world who are the subject of universal human rights.²

That feeling that an indigenous people struggling so often in vain against the smugness and intransigence of national and sub-national governments is part of something much bigger and more hopeful. After all, in UN terms, patronising premiers or misleading ministers are just shabby little colonial governments trying to hold onto ground which was lost, morally at least, 50 years ago.

Another benefit of the UN processes is to bring together the relatively more fortunate indigenous peoples from 'first world' countries with others hunted in the forests of their home countries. However painful Australian policy may be, opportunities to oppose the system and seek allies for change are relatively easy compared with many 'third world' countries. One Canadian indigenous leader told me how he had been addressing an indigenous meeting in Mexico, talking about how awful things were back home, when a young girl got up and said, "Hey, mister, we don't believe you. We've never seen an indigenous person so well dressed as you."

The present book is not all socio-political dynamics, however. Indeed, most of it is a clear explanation of the working of international law and the processes and trends focussed on the UN. As Central Land Council director Tracker Tilmouth is quoted on the cover, it is also "a 'do-it-yourself' guide to using the UN to safeguard human rights – and it will be a valuable tool for Aboriginal peoples and organisation". The UN system can be a frustrating maze, but there is a trend today in Australia among indigenous organisations and their more effective supporters to make use of it more and more. That trend is likely to accelerate with the Howard-Hanson-Herron movement against international contexts. After all, indigenous people are unlikely – and would be foolish – to collaborate in their own suffocation.

III.

Opening the section on UN treaty-based human rights, Hilary Charlesworth provides a punchy and clear-eyed view of a system in crisis and staggering under

2 M Dodson, "Linking international standards with contemporary concerns of Aboriginal and Torres Strait Islander peoples" in S Pritchard (ed), *Indigenous Peoples, the United Nations and Human Rights* 18 at 19.

its overload. No less disturbing are her comments about the way Australian governments are getting an easy ride for candour rather than action, while Australian NGOs fail to make their life more 'interesting' or take up other issues at the UN. This whole business is about creative tension, relentless pressure for change, shaming governments towards improvement. And as Charlesworth points out, NGO work is essential for the background and working even of governments participating in human rights forums.

After the introductory chapters by Sarah Pritchard and Mick Dodson already mentioned, Garth Nettheim focuses on the UN system as a whole and Dr Pritchard explains the Working Group on Indigenous Populations. Then follows the above-mentioned Hilary Charlesworth piece and a second one on individual complaints in the UN system. Philip Alston carries this on in relation to the Economic, Social and Cultural Rights covenant and Elizabeth Evatt on the Civil and Political Rights covenant. The latter is especially important for indigenous peoples because of its Article 27 which has become so prominent, thanks in a large part to the interpretations of Carsten Smith and other leading Scandinavian authorities. Michael Flaherty rounds this section out with a paper on individual complaints under Torture and Racial Discrimination instruments.

Next is a section on 'periodic reporting' where Australia, surely surprisingly, has quite failed to keep up with its obligations under the Civil and Political Rights convention (ICCPR). We find Philip Alston writing on individual complaints, and the very important chapter by Elizabeth Evatt on the ICCPR. The latter is twinned by a fine ICCPR chapter which closes the book, by Dr Pritchard, who notes:

The Human Rights Committee [of the UN] has rejected a minimalist interpretation of Article 27 as imposing an obligation on States parties merely to refrain from activities interfering in the enjoyment of the rights under Article 27. It has emphasised the obligation of States to take positive measures to ensure the survival and development of the cultures, languages and religions of the minorities concerned.³

It is worth noting that Norway's recent policy on Sami issues since the 1984 report of the Sami Rights Committee is built on Article 27. Mick Dodson picked up on the subject in the Australian context in his Third Report, 1995, as Aboriginal Social Justice Commissioner in a chapter entitled "International Human Rights Developments: Article 27, International Covenant on Civil and Political Rights; Draft Declaration on the Rights of Indigenous Peoples". (One may also note Dr Evatt's mention of definitions of minorities on page 114 of the present book and wonder how that might be used by Australians losing Aboriginal status.)

It is clear that there is a great deal of slack in the rights system which Australians could be taking up, but are not. With the imminent centenary of federation, it may be time for a national debate on rights. Canadian politicians were astonished when, opening a constitutional committee to daytime TV cameras, they found themselves awash on a sea of rights activism from all across

3 S Pritchard "The International Covenant on Civil and Political Rights and Indigenous peoples" in S Pritchard (ed), *ibid*, 184 at 195.

the country. Indigenous peoples were an important part of that as they told their stories, and most impacting of all were the tales of Japanese-Canadians who had suffered confiscation and internment in British Columbia during the war.

At any rate, the solution for all of us is as Justice Michael Kirby says in the Preface, a quote from the original conference from which this book grew:

The NGOs are the engine room for getting things done... We should all be in NGOs. As free citizens we should all be trying to do what we can to stir the pot of injustice. We should not be ashamed to ask embarrassing questions. It is our right. We should insist upon doing so, both in national forums and also in the international community. At the level of NGOs we should play our part. NGOs can change the world.⁴

IV.

There is another whole book which Sarah Pritchard is harbouring. It is the logical sequel to the present one. For years she has been the indispensable Australian adviser and expert on the international law and processes for indigenous people. She has been part of important processes herself and aide to indigenous delegations. As she knows better than most, international work is all about processes, intervention, strategy. We all need her insights and advice on what has worked, what has gone wrong, what more can be done, and how it can be done. She is a national treasure and therefore rarely allowed any peace, but it is in all our interests that she have time and opportunity to tell the story from the other end, the textured tale of Australia's arrival and activities in international indigenous law. The story is important not only in this country, but as the present book implies with its London co-publisher, the world has much to learn, too.

To return to definitions of Aborigines and NT statehood where we began, the informal kind of cooperative work among practitioners, whether official policy advisers, indigenous politicians, or researchers, would yield much. In the definition case, Australians would realise they were ahead of much of the world, had something to be proud of, and might decide to keep it. In the NT case, they would see that the considerable northern territories work of recent decades abroad warned them away from too-quick action and too-predictable unpleasant consequences.

The problem with policy-makers pretending that we are somehow separate from the rest of the world, like small children creating a play world with blankets and cardboard boxes under Mum and Dad's dining room table, is that the rest of us know the real world exists and that we are part of it. Sooner or later that world will call us out from under the table and force us to resume adult responsibilities.

4 S Pritchard, O Havnen and A Martin, Preface, *ibid*, vi at vii.