

Description of ILA Rights of Indigenous People Committee

Introduction

One of the most notable features of the contemporary international system has been the emergence of Indigenous peoples as distinct subjects of concern. This has been largely due to their own advocacy at the international level over the last three decades. Indigenous communities have generated significant international attention to the issues facing them in seeking recognition and protection of their rights.

Indigenous peoples are identified, and identify themselves as such, by reference to identities that pre-date historical encroachment by other groups, and by their ensuing histories marked by oppression and threats to their survival as distinct peoples. Numerous processes of the international system have responded to the common set of ongoing problems that are central to the demands of Indigenous groups, so that discernible patterns of responses and normative understandings have emerged at the international level in respect of Indigenous peoples.

The ILA Rights of Indigenous Peoples Committee

In June 2006 the ILA Executive Council approved the establishment of a Committee on the Rights of Indigenous Peoples. Professor James Anaya of the University of Arizona College of Law was appointed as chair of the Committee and Mr Greg Marks (Australian Branch) as the rapporteur.

Mandate

Following the first meeting of the ILA Rights of Indigenous Peoples Committee in Pretoria on 29 August 2007, it was proposed that the mandate of the Committee be progressed by the development of an Expert Commentary on the UN Declaration on the Rights of Indigenous Peoples. The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the UN General Assembly on 13 September 2007 (143 in favour, 4 against with 11 abstentions).

By its very nature UNDRIP, whilst it affirms that the rights set out:

constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world (Article 43),

does not of itself provide a full explication of the state of international law in respect of Indigenous peoples. In relation to some provisions it is uncertain whether they have yet crystallised into customary law and/or reflect existing treaty obligations. The provisions of UNDRIP would benefit from further analysis and explanation in respect of their meaning and scope. It is the intention of the Committee to undertake this task.

The objective of the proposed Expert Commentary is to provide authoritative clarification, elucidation and guidance in respect of the UNDRIP provisions, including their development, context and status in international law. By providing such clarification, it is expected that the Commentary will reduce confusion and contention over the normative status of the UNDRIP provisions and of Indigenous rights in general.

The Commentary will be available to practitioners and advocates, governments, courts and tribunals, academics and Indigenous organisations, to draw on and refer to in dealing with and utilising the Declaration.