Chapter Eleven

Native Title: A Path to Sovereignty

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Following the *Wik* decision, 78 per cent[2] of the Australian continent is potentially subject to native title claim, if it can be safely assumed that freehold title is not subject to claim or that native title cannot co-exist with freehold. The latter presumption is not beyond doubt.

One consequence of the federal Government's proposed *Native Title Act* amendment (10 Point Plan) will be an expected reduction in the claimable area by between five and eight per cent. The federal Minister for Aboriginal Affairs is reported as saying that 70 per cent or more of Australia will still be available for claim under the amended *Native Title Act*.[3] This, of course, comes somewhat as a shock to most Australians, who assumed that the *Native Title Amendment Bill* was designed to recognise the intent of the *Mabo* (No.2) decision and restore the level of potentially claimable land to the pre-*Wik* level of approximately 38 per cent.

Native title rights have not been defined. Nor will they be defined by the proposed amendments to the *Native Title Act*. It will be left to courts to define the incidents of native title on a case by case basis. It is unclear whether those incidents will include rights to sub-surface water or mineral resources, although the proposed amendments seek to preclude both possibilities. NSW relies on the Royal prerogative to underpin its ownership of the Royal Minerals (gold and silver).

A case is likely to be constructed by Aboriginal people, on the basis of sovereignty, to test the Crown ownership of minerals. If a case for sovereignty is successful, then there may be latitude for a claim for compensation in respect of at least the royal minerals, or a royalty payable to indigenous groups for royal minerals extracted, both past and future. If Crown ownership of minerals is affirmed in the amendments then there may well be a case for compensation mounted by indigenous groups.

The States are wary of this possibility and have subsequently encouraged the federal Government to avoid any affirmation of Crown ownership.

Overseas, such as in some areas of Canada, minerals rights are vested in indigenous people. There may be a strong push for such precedent to be extended to Australia, particularly if coupled with the sovereignty argument. The granting of mineral rights as a native title right may well be a position the federal Government is willing to concede should it find itself in a difficult negotiating position with indigenous groups. This would be a simple method of the government displacing the burden of compensation to those who wish to acquire the mineral rights ... a simple case of user pays.

In Western Australia specifically, the *Land Act* provides exclusive rights of pasturage for the term of the pastoral lease. It does not give the pastoral lease holder general rights to soil or timber. There is some question as to whether these rights may therefore be available for claim through native title. If not, they may well accrue through the application of one or more international instruments.

Native Title and International Instruments

Recognition of native title can be traced back to early human rights instruments passed by the United Nations, the Organisation of American States and the Council of Europe in the period 1948 to 1970 (Appendix 1). By guaranteeing specific human rights of the individual, these

conventions laid the basis of an argument for the recognition of indigenous rights as a collective. Indigenous people argue that their enjoyment of the basic human rights guaranteed by these early instruments is dependent on the recognition of their collective rights. They cannot have one without the other, they contend.

The most prominent of the early human rights conventions is the United Nations' *International Bill of Human Rights* which is made up of three instruments, the *Universal Declaration of Human Rights* (1948), the *International Covenant on Civil and Political Rights* (1966) and the *International Covenant on Economic, Social and Cultural Rights* (1966).

The *Universal Declaration of Human Rights* focuses principally on human rights, and in that respect is associated with the rights of the individual. In contrast, the latter two Covenants widen the scope of human rights to include economic and social rights and with reference to minority, community and group rights. The group and collective rights are seen as being associated rights to peace, environmental conservation and humanitarian assistance, and therein extend beyond the rights of any individual. The move to an expression of rights on behalf of a collective or group is a major step towards the recognition of a body corporate with an identifiable political, economic and social continuity.

The myriad of indigenous related studies, declarations and instruments produced under the auspices of the United Nations, Organisation of American States and European Parliament, since the early 1980s, is indicative of a recent shift from preoccupation with human rights issues, as such, to concern with the rights of indigenous people as a "special" group (Appendix 2). These activities represent a broader movement towards the establishment of minimum standards for the recognition of indigenous rights. Their link to early human rights instruments ensures that few countries will escape their influence. The human rights obligations of member countries are being slowly expanded to include the recognition of the "special" rights of indigenous people.

The *Native Title Act* 1993 provides a good example of how international conventions feed through to native title issues in Australia. In the preamble, there is specific reference made to Australia's ratification of the *International Bill of Human Rights* and the *International Convention on the Elimination of All Forms of Racial Discrimination.* Similarly, the "right to negotiate" and "good faith consultation" clauses in the *Native Title Act* are replicas of provisions in the International Labour Organisation's (ILO) *Convention 169* (*ILO 169*). Clearly, the Keating Government intended the Act to be seen as building on the international standards set by the United Nations.

ILO 169

ILO 169, also known as the *Convention Concerning Indigenous and Tribal Peoples in Independent Countries*, was essentially the first international instrument to establish indigenous land rights. The instrument, adopted in 1989, necessarily superseded the *Indigenous and Tribal Populations Convention No. 107* (1957), which was based on a philosophy of assimilation and therefore found to be unpalatable. *ILO 169* introduces the right to self-determination, the right to consultation for participation, the right of indigenous and tribal people to decide their own priorities, and the provisions on contracts and cooperation across borders. It deepens the concept of land and territory, introduces new provisions on the rights of indigenous and tribal people to natural resources and the return of the ancestral lands they have lost.

Going further, *ILO 169* establishes the right of indigenous and tribal people to determine their own priorities for their development and to exercise control over any development that may occur on their ancestral lands. They are to be consulted in good faith on appropriate procedures

and representative institutions in respect not only of administrative and legislative measures but also development plans.

In addition, *ILO 169* ensures that governments will conduct studies in cooperation with indigenous and tribal people to assess the social, spiritual, cultural and environmental impact, on the people, of planned development activities. It requires governments to recognise the "special" relationship of indigenous and tribal people with their lands, and protects the indigenous and tribal people's ownership and possessory rights to the lands. It safeguards their rights to natural resources within their ancestral lands and territories, their right to participate in the use, management and conservation of those resources, and ensures that they will be consulted prior to exploration or exploitation activities of mineral or sub-surface resources or other resources pertaining to indigenous and tribal people's lands but whose ownership is retained by the state.

ILO 169 also ensures that indigenous and tribal people will be consulted wherever a change in their capacity to own the lands is being considered. In the case of people who have been displaced from their ancestral lands, indigenous and tribal people, under *ILO 169,* have the right to be relocated only with their free and informed consent or, following appropriate procedures including public hearings, to be provided with lands of quality and legal status at least equal to the lands previously occupied, and to be fully and adequately compensated when relocated.

Each country that ratifies *ILO 169* is bound to send evidence of implementation of the instrument's provisions to the ILO. The International Labour Office has set up a procedure which will, from time to time, examine the application of conventions and recommendations by ratifying countries. The International Labour Office may seek further information on compliance by requests to the national government in respect of the implementation of *ILO 169.* The observations by an independent committee on implementation are published by the ILO. To date, only 10 countries (8 Latin American, 2 Nordic) have ratified *ILO 169,* although the number is reportedly growing.

UN *Draft Declaration on the Rights of Indigenous Peoples*

The provisions of the UN *Draft Declaration on the Rights of Indigenous Peoples* bear considerable similarity to many of the articles of *ILO 169.* In the *Draft Declaration,* the rights of indigenous people are being expanded such that they are on the edge of being recognised beyond individual rights at a more inclusive level. Rather than being seen as group or minority rights, there is a distinct move to see them as a separate category which is not encompassed within the original *Universal Declaration of Human Rights.* In that respect, indigenous people are lobbying to have a further instrument drafted to recognise their particular rights over and above those declared in the *Universal Declaration*.

Indigenous groups claim that their unique rights deserve particular recognition and must be distinguished from the rights of minorities and from the rights of communities. They contend that these rights should not be confused with the personal rights conferred on all people under the *International Covenant on Civil and Political Rights.* Rather, they see the adoption of the *Optional Protocol,* and its provision for the determination of complaints against State Parties, as confirming their separate and unique status. The *Optional Protocol to the International Covenant on Civil and Political Rights* empowers the Human Rights Committee, established under part IV of the *Covenant,* to receive and determine complaints from individuals who claim to be victims of a violation of any of the rights contained in the *Covenant* (Article 1).

The indigenous groups contend that the *Universal Declaration* provides them with the right to freely participate in the cultural life of their community (Article 27), the right to take part in the government of their country (Article 21), and stresses their duties to the community in which the

free and full development of their personality is possible (Article 29). Whilst these rights appear to be available to all persons under the *Universal Declaration*, indigenous people assert that their situation is so unique that a separate instrument is necessary for the recognition of the particular situation of indigenous people.

The *Draft Declaration*, it is contended by indigenous groups, gives particular emphasis to the rights of communities and community structures, and in that respect transcends the human rights of the individual and the rights of minority groups. The grant of rights to a collective also satisfies and subsumes the issues of concern for the rights of individuals and therein it would be more appropriate, they contend, to recognise and grant the rights of indigenous people as a collective.

There has been considerable criticism of the proposal for community rights on the basis of group identity or membership. Such rights are criticised as being in conflict with what is seen as universal human rights of the individual. The basis of group or community rights is seen as the foundation for the development of an independent state system at international law and has become increasingly inclusive to the detriment of the definition of individual rights.

Self-determination

One of the most contentious issues about the *Draft Declaration* is the concept of self-determination (Article 3), the meaning of which has been left ambiguous. Partly for this reason, the declaration has received a lukewarm response from countries such as Australia, the US, New Zealand and Canada. The unqualified right to self-determination is seen as too open to different interpretations and possibly implying a right to secession.

The Aboriginal and Torres Strait Islander Commission (ATSIC) believes that "the term self-determination' should not be qualified so as to remove any possible right to secession". Self-determination is also a right which finds expression in Article 1 of *ILO 169* (1989) and Article 2 of the *Declaration of the International Human Rights Conference of Vienna* (1993). ATSIC is firm in its view that unqualified reference to self-determination should remain in the *Draft Declaration* and that Aboriginal communities in Australia should have the right to exercise self-determination according to their own circumstances.

ATSIC interprets the *Draft Declaration on the Rights of Indigenous Peoples* as providing that, among other things:

- Indigenous people have the right to participate in decisions that affect them, and therein they may choose their own representatives and use their own decision-making processes (Article 19) [with no limit on the number of representatives per group or the number of groups in any negotiation];
- Indigenous people have the right to participate in law and policy making that may affect them, and governments must therein obtain the consent of indigenous people before adopting such laws and policies (Article 20);
- Indigenous people have the right to determine priorities and strategies for their own development, and therein they should determine health, housing, economic and social programs and attend to delivery of the programs through their own organisations (Article 23) [the basis of local government acknowledged by developers through regional agreements];
- Indigenous people have the "right to maintain and strengthen their distinctive spiritual" relationship with the land and waters (Article 25) [*ILO 169* specifically recognises the ability to elaborate traditions as was evident in the Coronation Hill and Hindmarsh Island cases];

- Indigenous people have the right to own and control the use of the land, waters and other resources (Article 26);
- Governments must obtain the consent of indigenous people before giving approval to activities affecting the land and resources, particularly the development of mineral, water and other resources (Article 30);
- As a form of self-determination, indigenous people have the right to self-government in relation to their own affairs. These include culture, religion, education, media, health, housing, employment, social security, economic activities, land and resources management, environment and entry by non-members (Article 31);
- Indigenous people have the right to determine who are their own citizens (Article 32);
- Governments shall respect previous agreements entered into with indigenous people. Disputes shall be resolved by international bodies (Article 36);
- The United Nations and other international organisations shall provide financial and other assistance in order to give effect to the rights recognised in this Declaration (Article 40).

This interpretation of ATSIC's statement alone suggests that signing the *Draft Declaration*, as it currently stands, would be an act destructive of Australian sovereignty.

Possible Outcomes of Native Title in Australia

Appendices 3 and 4 illustrate the intricate relationship between native title in Australia and international instruments and events. The Australian government's policies on indigenous people appear to be influenced by Canadian policy, which has gone much further in recognising indigenous rights, and United Nations activities, which reflect opinion on the rights of indigenous people (Appendix 3). Canadian legal events also set precedents for Australian courts (Appendix 4). Specifically, the *Mabo* and *Wik* decisions have mirrored Canada's *Sioui* and *Delgamuuku* decisions, with a time lag of approximately two years between the two countries. This relationship serves as a useful predictor of the possible cumulative outcomes of native title in Australia.

Co-existence on Fee Simple

It is generally accepted that in Australia, a grant of fee simple (i.e., freehold, which entails a perpetual right of exclusive possession) would extinguish native title regardless of the grantee's actual occupation and use of the land. In the *Wik* decisions, this was clearly stated by Toohey, J. who said "... it has been generally accepted that a grant of an estate in fee simple extinguishes native title rights since this is the largest estate known to the common law".[4] Similarly, Kirby, J. said "such [co-existence of native title and pastoral rights] would not be the case where an estate or interest in fee simple had been granted by the Crown".[5] In Canada, however, "even a fee simple interest is not necessarily inconsistent with indigenous rights".[6]

In the case of *R v. Sioui*,[7] Larner J. did not find any inconsistency between the Crown's use of the land and the Hurons' exercise of their rites and customs.[8]

In *R v. Badger*,[9] Cory J. found that "Treaty No.8 Indians" would continue to have the right to hunt throughout the territory they surrendered in the treaty, except on land that was "taken up" for "mining, lumbering or other purposes".[10] The test for the continuance of the "right of access" under the treaty was not the title conferred but the actual use to which the land was put. Therefore, Cory J. concluded that "where lands are privately owned, it must be determined on a case-by-case basis ... If the lands are occupied, that is, put to visible use which is incompatible with hunting, Indians will not have a right of access".[11]

In *Badger*,[12] the treaty right to hunt continued on land granted in fee simple to private landowners and was exercisable to the degree of inconsistency with the actual or visible use

made of the land by the private landowner. However, if the actual or visible use of the land ceased, then Cory J.'s judgment may have left the door open for the hunting rights to be revived. Although buildings may have been constructed on the land, the continued occupation and use of such structures would seem necessary to sustain the inconsistency with Indian hunting rights. What actually constitutes "occupation" of the land was a matter "to be explored on a case-by-case basis".[13] The matter was one of suspension rather than extinguishment of rights.

The similarity of the *Badger* and *Wik* decisions is shown in Toohey J.'s judgment, where he states that the question of inconsistency between native title rights and pastoral rights must be determined on a case-by-case basis. If the two sets of rights can co-exist, then native title is preserved, but where inconsistency is deemed to exist, the rights of the pastoral lessee prevail.[14]

The co-existence of aboriginal rights with Crown rights which was addressed in *Badger*, was earlier considered also in *Delgamuuku.*[15] Macfarlane JA., in co-authoring the main majority judgment in *Delgamuuku,* stated that even where the Crown may create an interest in land which was inconsistent with aboriginal rights, "if the consequence is only impairment of the exercise of the right it may follow that extinguishment ought not to be implied ... Two or more interests in land less than fee simple can co-exist. A right of way for powerlines may be reconciled with an aboriginal right to hunt over the same land".[16]

Macfarlane JA.'s test for continuance of aboriginal rights was more the actual or visible use of the land as compared to the legal inconsistency that may derive from the grant of title. "A fee simple grant does not necessarily exclude aboriginal use".[17]

Given the strong relationship that appears to exist between Canadian and Australian legal events and the fact that Canadian legal decisions appear to set precedents for Australian decisions, it is likely that co-existence of native title and fee simple will soon be tested in Australian courts, with similar results to Canada's.

Chief Justice Brennan stated in his *Wik* judgment:

> "If it were right to regard Crown leaseholds not as estates held of the Crown but merely as a bundle of statutory rights conferred on the lessee, it would be equally correct to treat a grant in fee simple' not as a grant of a freehold estate of the Crown but merely as a larger bundle of statutory rights. If the grant of a pastoral lease conferred merely a bundle of statutory rights exercisable by the lessee over land subject to native title in which the Crown (on the hypothesis advanced) had only the radical title, the rights of the lessee would be *jura in re aliena*: rights in another's property. And if leases were of that character, an estate in fee simple would be no different."

Chief Justice Brennan's view was in the minority and received little attention at the time of the *Wik* decision. Although it was received by many as a counter argument to the coexistence of native title with fee simple, it potentially provides some grounds for an argument in support of co-existence.

Increase in claimable Land

The recommendation of Justice Woodward for a *Land Rights Act* in the Northern Territory produced a rather different result than intended. Justice Woodward intended that between eight and twelve per cent of the Northern Territory land mass would become Aboriginal land through the *Aboriginal Land Rights (Northern Territory) Act* 1976. Currently, 42 per cent of the Northern Territory land mass has become Aboriginal land through the process, with a large number of claims totalling a further eleven per cent in progress or awaiting hearing.

Former Prime Minister Keating, in his preamble to the *Native Title Act* 1993, made it clear that pastoral leases would not become subject to native title claim. Only 38 per cent of Australia was

anticipated to be subject to claim. Clearly the *Wik* decision has shown that pastoral leases in Queensland can be subject to native title claim. That decision has raised the amount of land possibly subject to native title claim to 78 per cent.[18] In response, the current federal Coalition Government has moved to amend the *Native Title Act* 1993 to reduce the claimable land to 70 per cent, still exceeding the original intention by more than 30 per cent!

The basis of land claims under the *Aboriginal Land Rights (Northern Territory) Act* 1976 was presumed to be one of patri-lineage claimed by a local descent group. The basis of the claims has widened from those early criteria. Groups no longer have to be local in terms of their residence, and there is no bar to area of location of residence. Further, many cases have been recognised which could not demonstrate actual blood descent from forebears in the area.

Some examples of such claims, as cited by Maurice J. (Aboriginal Land Commissioner) in his report on the Lake Amadeus Land Claim, are listed below:[19]

i) Parents travelling through the vicinity of the claim area (para. 210);

ii) Grandparents travelling through the vicinity of the claim area (para. 210);

iii) Claimant travelling through the vicinity of the claim area (para. 210);

iv) History of employment on the claim area, leading to a knowledge of country (para. 210);

v) Affiliation through spouse (para. 210); and

vi) Skin group membership, which requires knowledge of stories associated with the claim area, even if such stories may have been acquired unscrupulously (paras. 248-249).

The breadth of application of the legislation has increased as the basis of the legislation is tested in the courts. Consequently, there have been many wide-ranging and unintended consequences, flowing from not only the *Aboriginal Land Rights (Northern Territory) Act* 1976 but also the current *Native Title Act* 1993.

Domestic Dependent Sovereignty

The human rights of the individual being extended to the social, economical and political rights held by the collective or the group lays the foundation for Aboriginal sovereignty. To grant regional administrative powers to representative Aboriginal bodies provides the basis on which to recognise domestic sovereignty (Appendix 4).

That domestic sovereignty is dependent upon funding from the federal Government, and therefore is a domestic dependent sovereignty which provides what appears to be an intermediary tier of government to local regions. However, the *Draft Declaration* and other associated international instruments would permit regional administrative recognition to be promoted to a sovereign state basis, whereby the federal Government would deal with Aboriginal groups in Australia on a sovereign state to sovereign state basis. This is precisely the basis of the relationship between the governments of North America and the First Nation groups. The Canadian Government has clearly stated that it deals with the First Nation groups in Canada on a sovereign to sovereign basis. The step to domestic dependent sovereignty is a small and simple one thereafter. The consequences are profound.

Sovereignty is obviously something that some Aboriginal groups are considering. In July, 1997, at the United Nations Working Group on Indigenous Populations in Geneva, a peak Aboriginal group in Australia advocated the negotiation of a settlement between the Australian Government

and the Aboriginal people from Australia by way of treaty. It advocated five principles as follows:

- "the right to decide whether we want to be part of the nation called Australia;
- the right, so long as our status remains as that of a Dependent People within the Australian community, to fully participate in every level of society through positive and special measures;
- the right to negotiate an Interim Charter by which a timetable for regaining control over ourselves and our territory is progressively achieved;
- the right to the return in ownership of sufficient territories (including land and sea) to satisfy our needs as a People; and
- the right to negotiate arrangements by which the territorial integrity of Aboriginal lands and Australian territory is to be mutually respected."

The possible outcomes as seen by indigenous groups in Australia are:

i) A separate geographically defined sovereign state governed by indigenous people. Such a state would most probably be the Northern Territory or the arid desert region of Central Australia. However, such a separate state is unlikely to satisfy the needs of most Aboriginal groups, so those who would benefit would be those who have a traditional interest in such area. The bulk of the Australian Aboriginal population on the eastern seaboard would be excluded.

ii) A second possible outcome would be regional agreements recognising and giving official exclusive status to representative bodies (through the *Native Title Act).* These bodies would become the conduit through which the Federal Government would provide funds for the delivery of services to communities, therein eventually becoming a replacement tier of the existing government, i.e., a local or regional government authority.

Domestic sovereignty would have important implications for Australia's economy and international standing as a sovereign nation. In Canada, domestic sovereignty has had some unintended outcomes, and in trying to reverse these, the Government is intending to spend hundreds of millions of dollars to buy back concessions already granted to Aboriginal groups. Settlement of some current claims may require billions of dollars, which in turn would threaten the country's AAA credit rating.

Conclusion

In summary, land rights, native title and their link to international instruments inevitably have a compounding effect on Australia, the extent of which is largely unknown but potentially profound and beyond the Australian Government's control.

Native title issues in Australia are inextricably intertwined with international events and instruments. We can observe a pattern of activity by UN bodies and other international organisations such as OECD, in conjunction with what are called "non-government organisations", such as Greenpeace, World Wildlife Fund and the Sierra Club, to undermine the present political structure of the world, and replace it with one more to their liking.

Today, the world comprises a collection of nation states who interact with each other as legal entities, and who are legally sovereign within their respective jurisdictions. We can readily observe an ongoing process in which the sovereignty of the nation states is diminished and political power is transferred from those states to what is agreeably described as the "international community". The *Draft Declaration on the Rights of Indigenous People* and *ILO 169* are important examples of this process.

Whilst Australia is unlikely to ratify *ILO 169,* and it is contended that the *Draft Declaration* is not a Convention and therefore will not be legally binding on signatories, the instruments still represent major milestones in the global conceptualisation of indigenous rights. As such they will have a compounding effect on native title in Australia. Already, Chief Justice John Doyle in South Australia has cited the *Draft Declaration* as a standard setting instrument.

The recent Mitchell Decision[20] of the Canadian Federal Court has recognised the international nature of Aboriginal rights and ensured that Aboriginal customary rights will be preserved across international borders. Aboriginal rights are clearly being distinguished and recognised as distinct from Aboriginal title. The distinction warrants ongoing attention.

The issue of domestic sovereignty is set to dominate future international discussions of indigenous rights, and decisions made by the United Nations, together with precedents in other countries, could potentially change the map of this country. Land rights and native title in Australia are examples of a very dynamic debate which is open-ended, and which can be simply linked to international conventions and trends to develop a credible basis for a range of outcomes with far reaching and irreversible consequences.

Australians tend to take their sovereignty for granted. That sovereignty is now being contested. We must become more aware of the issues, the players and be prepared to defend our sovereignty if we are to maintain it.

Endnotes:

1. The author wishes to acknowledge the significant contribution made by Sani Lupahla in the research redrafting that she has conducted for this paper.

2. *Herald Sun*, 29 September, 1997: *Land rights and wrongs*.

3. *The West Australian*, 11 September, 1997: *Herron storm at meeting*.

4. Cited in *The Wik Peoples and Others v. The State of Queensland and Others,* Australian Indigenous Law Reporter, Vol. 2, Issue 1, 1997, p.38.

5. *Ibid,* p.41.

6. Kent McNeil, Indigenous Law Bulletin, Vol.4, Issue 5, August-September, 1997: *Co-existence of indigenous and non-indigenous land rights: Australia and Canada compared in light of the Wik decision,* pp. 4-9.

7. (1990) CNLR 127 (SCC).

8. *Ibid,* pp. 157-158.

9. (1996) 2CNLR 77 (SCC).

10. *Ibid,* p. 95.

11. *Ibid,* p. 102.

12. *Loc. cit.*.

13. *Ibid,* pp. 96-97.

14. Australian Indigenous Law Reporter, *loc. cit.,* p. 39.

15. (1993) 104 CLR (4th) 470.

16. *Ibid,* p. 525.

17. *Ibid,* p. 531.

18. *Herald Sun*, 29 September, 1997: *Land rights and wrongs*.

19. Maurice, J. (1988), *Lake Amadeus Land Claim,* Australian Government Publishing Service, Canberra.

20. *Mohawk Council of Akwesasne v. Canada (Minister of National Revenue - MHR*), [197] F.C.J. No. 882 (QL).

Appendix 1
Human Rights Milestones: United Nations
Government United Nations NGOs
1950: Council of Europe. European Convention for the Protection of Human Rights & Fundamental Freedoms adopted.
1969: OAS
American Convention on Human Rights adopted.
1959: OAS. Inter American Commission on Human Rights established.
1966: International Covenant on
Civil & Political Rights adopted
Self Determination (Art 1.1).
1966: International Convention on Economic, Social & Cultural Rights adopted
Self Determination (Art 1.1).
1948: Universal Declaration of Human Rights adopted.
1963: United Nations Declaration on the Elimination of All Forms of Racial Discrimination.
1948: Organisation of American States (OAS)
American Declaration of the Rights & Duties of Man adopted.
1968: Proclamation of Teheran reviewing progress in human rights issues & reaffirming previous Instruments.
1961: Council of Europe.
European Social Charter
Guarantees economic, social & cultural Rights.
1978: OAS Inter-American Court of Human Rights in force.
1969: International Convention on the Elimination of All Forms of Racial Discrimination in force.
1981: Organisation of African Unity
African Charter on Human & People's Rights adopted.
1995: OAS. Inter-American Declaration on the Rights of Indigenous People approved.
1996: OAS-UN. Cooperation Agreement signed between the OAS and UN.
1994: Sub-Commission on Prevention of Discrimination & the Environment.
Draft Declaration of Principles on Human Rights & the Environment.
1995: UN. Agreement on the Identity and Rights of Indigenous People.
1996: UN-OAS. Cooperation Agreement.
1994: Sierra Club Sponsors meeting to draft declaration on Human Rights and the Environment.

Appendix 2

Indigenous Milestones: United Nations

1957: ILO 107

1971: Economic and Social Council authorises UN Sub-Commission on Prevention of Discrimination and Protection of Minorities to conduct a review of the "Problem of Discrimination against Indigenous Populations".

1982: UN Working Group on Indigenous Populations set up as a result of Cobo reports. Studies by WGIP include treaties between indigenous people and states, intellectual property.

1988: WGIP produce first complete draft of the Declaration on the Rights of Indigenous People.

1989: ILO 169 (Convention on Indigenous and Tribal Peoples) - Establishes customary international law and treaty obligations.

1991: ILO 169 comes into force - ratified by Norway and Mexico.

1989: European Parliament "Position of the World's Indians".

1991: The World Bank Operational Directive 4.20.

1972: Inter-American Commission on Human Rights.

1977: International Non-Government Organisation Conference on Discrimination Against Indigenous Populations in the Americas.

1981-83: Cobo reports issued on the "Problem of Discrimination against Indigenous Populations". [Major catalyst.]

Government United Nations NGOs

1994: Summit of the Americas recognises the Decade of World's Indigenous People.

1992: Rio Earth Summit (United Nations Conference on Environmental Development) adopt Agenda 21 including a position on indigenous peoples' rights.

1992: Conference on Security and Cooperation in Europe.

"The Challeng of Change."

1992: Ibero-American Heads of State. Indigenous Peoples Fund.

1993: The Vienna Declaration and Program of Action adopted by the United Nations Conference on Human Rights.

1993: International Year of Indigenous People.

1993: Decade of World's Indigenous People.

1993: Proposal for permanent Forum for Indigenous People.

1994: Sub-Commission on the Prevention of Discrimination and Protection of Minorities adopt the WGIP Draft Declaration and submit it to the UN Commission on Human Rights. [Canada takes a leading role from 1982 to 1994.]

1994: Program of Action adopted by United Nations Conference on Population and Development.

1994: European Parliament Resolution on Self-determination for Indigenous People.

1995: Inter-American Commission on Human Rights approve draft of Inter-American Declaration on the Rights of Indigenous People.

1994: Inaugural International Day of the World's Indigenous Peoples. 09 August.

1993: WGIP produce the final revision of the draft Declaration on R.I.P.

Appendix 3
Indigenous Milestones: United Nations
Policy Policy Event Policy
Canada Australia UN USA
Integration
1953
Integration
1964
Working Group on Indigenous Populations
1982
Self Determination
Draft Declaration on Rights of Indigenous Peoples
Commissioned
1985
Self Management
1972
Self Determination
"Treaty Proposal"
1988
Negotiation
1973
Constitutional Recognition
1982
s.35 Self Government
Comprehensive Land Claims
Settlement
EcSoC Review of Discrimination Against Indigenous People.
1971
Integration
ILO 107
1957
Cobo Reports Discrimination Against Indigenous People
1981-83
Integration
1969
First Draft of Declaration on Rights of Indigenous People
1988
ILO 169
1989
i) Customary international law
ii) Collective Rights
iii) Self Determination
ILO 169 comes into force
1991
Key Provisions:
Right to negotiate;

Good faith consultations.
Vienna Declaration
1993
Self Determination Art. 2.
Sub-Commission on Prevention
of Discrimination & Protection
of Minorities
Current Studies
Protection of Heritage
of Indigenous People
1996
Land Rights of
Indigenous People
1996
Treaties & Agreements Between States & Indigenous Populations
1996
Title Affirmation
1993
Native Title Act

Appendix 4
Administrative
Effect
Claimable
Land
Basis of
Recognition
Self
Determination
Draft Declaration
1985
(Art.. 3)
Draft Declaration
1985
(Art.. 3)
ILO 169
(Art. 1)
1989
Vienna Declaration
(Art. 2)
1993
Land Agreements
Vacant Crown Land
Traditional continuous residential attachment
European Parliament Resolution on Self Determination for indigenous people.
1994
Multiple Local Agreements
Contemporary
residential attachment
Domestic Dependent
Sovereignty
Occupied
Freehold
(fee simple)
Contemporary
non-resident
self-identification
Multiple Group Regional Agreements
Regional
Self-Government
Unoccupied Freehold
(fee simple)
Multiple Regional Agreements
Pastoral Leases
Contemporary
non-residential

attachment
AUSTRALIA
Indigenous
Politics
Canada
Legal Event
Canada
Legal Event
Australia
Domestic
Dependent
Sovereignty
Constitution Act
1982
Self-Government
1982
Bicentennial Treaty
Proposal
1988
Native Title Act
1993
Delgamuuku.
Co-existence
test: visible use 1993
Sovereignty
1994
R v. Badger.
Co-existence on private land
Suspension 1996
Wik
1996
Mabo 2
1992
R v. Sioui.
Co-exist VCR
1990
R v. Sparrow.
Crown's Fiduciary Duty
1990
N.T.A.
(Amended)
1998
Self-Determination
CANADA