SURVIVING COLUMBUS

Indigenous Peoples, Political Reform and Environmental Management in North Australia



Edited by
Peter Jull, Monica Mulrennan, Marjorie Sullivan, Greg Crough and David Lea

Conference sponsored by the Central Land Council, Northern Land Council,
Island Co-ordinating Council and the North Australia Research Unit

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SURVIVING COLUMBUS

The year 1992 marked the 500th anniversary of Columbus's first voyage to the Americas. While the conquerors 'celebrated', indigenous peoples all over the world evaluated the impact of the expansion of Europe on them, their lands and their culture.

The North Australia Research Unit, the Northern Land Council, the Central Land Council, and the Island Co-ordinating Council of the Torres Strait Islands (with active participation from the Kimberley and Cape York Land Councils), jointly organised the Surviving Columbus conference. About 300 people – mainly Aboriginal and Torres Strait Islander people – attempted to draw out, share and explain the lessons from their own experience and from the experience of others elsewhere in the world.

At the time of the conference, concerned Australians were evaluating the implications of the High Court's Mabo judgement in the context of the reconciliation process, political reform, environmental management, funding, self-determination and self-government. This conference presented an opportunity to listen to each other and to indigenous people from other lands, especially from North America and northern Europe.

This book is a mixture: Aboriginal community members mixed with academics, bureaucrats, overseas visitors; Aborigines mixed with non-Aborigines; Australians with non-Australians; and Territorians with non-Territorians. Papers are written by leaders from indigenous and national organisations, academics, public servants, staff from Aboriginal organisations, consultants, and individuals with something to say. What emerged is still relevant because Mabo provides new opportunities for better indigenous-white relationships, demands new land and marine management strategies, and creates the need for new political structures for Aboriginal people.

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NOTE OF APPRECIATION

The conference *Surviving Columbus: The Indigenous Environment Today and Tomorrow* was held at Kormilda College, Darwin, from September 30 to October 2, 1992. It was attended by over 300 people, both Aboriginal – by far the majority – and non-Aboriginal. At the opening session Mr Mick Dodson, the then Director of the Northern Land Council and co-chairman of the conference, acknowledged that the conference was being conducted on land traditionally held by the Larrakia people. On behalf of the sponsoring organisations and all the people attending the conference, Mr Dodson expressed his appreciation to the Larrakia people, the traditional owners of the place.

PREFACE

In 1992 the world observed the quincentenary of Christopher Columbus's first voyage to the New World. Many books were written about Columbus, his voyages and the impact of his so-called 'discovery'. However, many indigenous people found few reasons to celebrate the dreadful treatment of their people that followed in the wake of Columbus in the Americas and later, Captain Cook and other explorers in Australia.

The Northern and Central Land Councils (NLC and CLC), the Australian National University's North Australia Research Unit (NARU), and the Island Coordinating Council (ICC) of the Torres Strait, were interested in providing a forum at which community people, expert researchers, active indigenous leaders, staff of indigenous organisations, representatives of indigenous communities (including some from overseas), civil servants and the general public could exchange information and ideas. Although history cannot be changed, there are lessons to be learnt from both the past and the experiences of others elsewhere in the world. Most importantly just before 1993, the United Nations' International Year for the World's Indigenous People, was a good time to seek new opportunities to build better and fairer relationships between indigenous peoples and non-indigenous peoples.

It was inevitable that there were problems in understanding between the various groups attending: in organisation; and in reconciling the interests and concerns of experts and non-experts, Aborigines and non-Aborigines and all the other interests represented. However, there was communication and goodwill between the groups and a lot of learning by all parties.

There was a willingness to share knowledge and to talk about problems and opportunities – how the former could be solved and the latter seized. The conference was seen as a beginning rather than a place where firm resolutions should be put and recommendations made. However, there was a good deal of debate and a surprising amount of consensus (see Chapter 32). For these reasons the conference was unique and this book attempts to document many of the issues discussed. This is not done in the usual academic way with references and carefully constructed analyses and

arguments, often using jargon. Each talk was taped and written summaries were put together by the editors and then checked by the authors. This book is therefore a record of what was said at the conference.

The conference used the terms 'indigenous' and 'environment' very loosely. Though the management of the land and the sea were central themes, it was inevitable that such issues should be linked with land rights, indigenous rights, human rights, self-determination and fundamental freedoms. Also the Mabo decision was in everyone's minds. How would it relate to the issues being discussed? It was significant that the Chairman of the ICC, Mr Getano Lui Jnr, said in his welcoming remarks that the High Court decision would have an impact on all the indigenous peoples of Australia. He said, 'We appreciate the historic opportunity to be able to sit and discuss with you issues that concern us all. While our cultures may be different the issues of land, housing, education, health and culture unify us.'

I hope, in the next few days with you, to share problems that we face in our communities and to gain constructive information to help us solve them.
(Getano Lui Jnr, 30 September 1992)

ACKNOWLEDGMENTS

We are grateful to the organising committee (Mick Dodson and David Lea [Co-Chairs], Peter Jull [Conference Convenor], Denella Beer, Janet Sincock, Marjorie Sullivan, Adela Graetz, Trish Wilkes, Greg Crough, Monica Mulrennan, and Wayne Pash) and the four co-operating agencies (NLC, NARU, CLC and ICC) that made the conference possible. Peter Jull was the conference coordinator and the idea to hold the conference was his. Thanks are also due to Kormilda College who were very cooperative and supportive hosts, Mardy Aye, Toni Bauman, Ana Bissett, Allan Carruthers (NTU), Clare Collier, Graeme Dennehy (NTU), Lindsay Gordon (Ansett Airlines), Nicki Hanssen, Tony Haritos, Forrest Holder, Beverley Lea, Vince Leveridge, Getano Lui Jnr, Chips McInolty and Green Ant, Kate Nowers, Darryl Pearce (then at the CLC), Colleen Pyne, Sally and Susannah Roberts, Kumantjayi Ross, Wendy Sarkissian, Kylie Sincock, Tracker Tilmouth, Peter Yu who all made special contributions to the organisation of this conference. In addition we are grateful to Sally Roberts and Ann Webb for undertaking the copy editing and the organisation of the production of this book, to Janet Sincock, Nicki Hanssen and Sigrid Mackie for word processing, and to all the authors and other contributors at the conference.

1

INTRODUCTION
THE MEDIUM WAS THE MESSAGE

Peter Jull, Senior Research Fellow, North Australia Research Unit
(now Consultant, Author and NARU Associate)

The *Surviving Columbus* conference grew from a wish to make a positive contribution during the anniversary year of Columbus to the future of indigenous relations with other Australians. The North Australia Research Unit (NARU) holds a public conference nearly every year. However, something more than the usual forum of scholars gathering to read papers seemed desirable for an event in which indigenous peoples were both subject and main audience. When we raised the idea of a special event with the Northern and Central Land Councils, their response was enthusiastic. The Island Coordinating Council of Torres Strait also formally sponsored the event. The Kimberley and Cape York Land Councils participated in a significant way. In other words, the conference involved the principal representative Aboriginal and Islander bodies from across northern Australia.

For many years NARU has assisted researchers from around Australia and overseas to carry out projects among indigenous peoples and to publish results. Many of these researchers are well known and popular figures in the bush. This grassroots work has been where the bulk of NARU's research and funding relating to indigenous people has been targeted over the years. This work continues today with such projects as Greg Crough's analyses of the indigenous economy and fiscal issues in bush communities and recent community planning projects of David Lea, Vince Leveridge, and Jackie Wolfe across northern Australia.

Another slice of work has involved the impacts of policies and programs of governments as these relate to indigenous people and regions more generally. Current work by Monica Mulrennan and Marjorie Sullivan on the Torres Strait coastal and marine environment is an example of this work.

Major national debates and policy processes, such as the current constitutional decade and the upshot of the *Mabo* decision, have been a third layer of work, and one which has become more active in the last two years. Nugget Coombs and Peter Jull have been active on constitutional issues, for instance.

A fourth layer, or a different way of packaging the other three, has been international comparative work on indigenous policy issues. For instance, a NARU one-day conference in Darwin in 1990 provided a forum for studies linking northern Australia, Alaska, Canada and Norway, resulting in a published volume, *The Challenge of Northern Regions* (Jull & Roberts eds 1991).

These four areas have been increasingly active in NARU in the past three years – and promise to remain active. Furthermore, there has been a greater attempt at NARU, by staff and visitors alike, to focus project work on policy processes so that these may be enriched, evaluated, improved, or reformed. We believe that such an active emphasis is essential, not least because northern Australia has relatively fewer sources of information and analysis providing views independent of a small number of vested interest. We do not accept the views of some of our critics that NARU should not be involved with contemporary or controversial issues, and we notice that those critics are usually the same people who are loudest in demanding active commitment to the north. In other words, their criticism is not of our *activity* but of our *views* when these diverge from their own.

Academics in Australia have contributed greatly to indigenous socio-economic and political needs over the past decades. Not only NARU, but Australian National University researchers from Canberra have played a distinguished role. Such activity compares favourably with countries like Canada where, by and large, academic interest in contemporary needs has come belatedly, after the indigenous political movement had begun winning the big policy and political battles across the country. A different sort of danger faces academics and researchers concerned with indigenous peoples in Australia today – the danger of losing touch with change.

It would be a mistake to become comfortable or imagine that past contributions somehow ensured a privileged role. The fact is that despite all the efforts of all the friends of indigenous peoples, indigenous conditions and rights have too often remained deplorable. That fact is fuelling the indigenous peoples' renaissance which is surging today. Any ethno-political movement has its own imperatives. It will not be content to be patronised by the white man's academic profession any more than by the rest of a power structure of an alien and historically oppressive culture. Professional relationships will be judged on their merits – are they useful? Are the experts congenial, understanding, committed to indigenous self-determination? The social sciences and public policy research will have to function not only in the European tradition but in turbulent, evolving, indigenous traditions too. That is the challenge, and surely one which most social researchers will respect and be glad to take up.

The 'experts' on indigenous people and issues concerning them today are not persons with white faces found in large universities. Rather, they are – and must be – indigenous persons in organisations and settlements dispersed around the country. Contemporary indigenous issues are not technical or objective problems to be fixed by trained outsiders; they involve emotional and subjective aspirations, ideals, fears, and hopes which must be politically addressed just like the equivalent issues in the Australian community as a whole. How they wish themselves schooled, housed, nursed, etc, and how they want their territories developed, protected, restored, or zoned are political issues. The root social issue of indigenous Australia is powerlessness, after all, and no amount of technical fixes by experts can treat that disease. Many Australians, including many officials and politicians, have not yet accepted this, but those of us engaged in social, cultural, economic, environmental, and political research have no excuses for a lack of understanding.

The conference was too heterogeneous to be easily summarised. What is offered in this volume, therefore, is

- a collection of the major formal presentations,
- summaries of each of the three workshops which met in two half day sessions, and
- a summary which was prepared on the last day of the conference and was read to the final plenary session.

It is not possible to reproduce all the discussion of the conference in a volume of manageable size, the more so as it took place in three large groups which themselves sometimes broke into many sub-groups. However, NARU retains a set of cassette tapes of the conference, and these are available from the NARU library for anyone who may wish to use them there. In addition, virtually full accounts of the Marine Workshop by Monica Mulrennan and of the Land Workshop by Marjorie Sullivan are available in the NARU library as reports.

Before the end of 1992 an 8-page newspaper format summary of the conference was also distributed to all who attended *Surviving Columbus*, to many Aboriginal communities, official and other bodies concerned with indigenous issues, and, as an introduction to 1993 as International Year for the World's Indigenous People, to all foreign governments with diplomatic relations with Australia.

* * *

As the organisers of *Surviving Columbus* plenary and workshop sessions, we can make a few more comments. The central dilemma of the conference was the accommodation of specialist talk on various subjects like international law with the immediate local concerns of persons attending from the bush. Some people argued that we should not have tried such 'highfalutin' subjects at all.

Australia's parochial and xenophobic persons come in many shapes and sizes, and are not limited to the opponents of indigenous self-determination. Knowledge and human rights know no borders. The fundamental purpose of the conference was to relate the political aspirations of indigenous people of north Australia to world-wide currents. To do other than we did would have meant having no conference at all, or holding a small elite gathering which reached few people. We think we were right to hold the conference in the form we did. What is more, the overwhelming feedback we have had during and after the conference has been positive.

Nevertheless, there are many practical difficulties. The idea of preliminary workshops of conference delegates was one idea floated, and indeed, some delegates were able to organise such. The trouble is that such a procedure assumes in advance that we know what speakers will discuss. While it is a very good approach for a controlled process, for an open forum such as *Surviving Columbus,* it has limited relevance. The perils of a wide open conference were experienced to the full: at times the discussion became disjointed, or else individuals simply made summary expositions which were left hanging and were never pursued. Much of this difficulty arose from the sheer number of persons present. Everything was too big.

Allowing for these difficulties, what was accomplished? A large number of government officials were exposed to the emerging indigenous rights agenda – an agenda taken seriously in many parts of the world and which will not by-pass Australia. A large number of indigenous persons from across northern Australia were made aware of the fact that similar struggles to their own were proceeding elsewhere in the world – ones which had potential relevance and usefulness for them here at home. Everyone present learned something, or heard something expressed in new ways, from speakers or fellow participants.

Perhaps the most important reality communicated by *Surviving Columbus* to everyone was that indigenous issues are nationally and internationally important political issues. They are not simply local problems, let alone areas of local untidiness which simply need a helping hand from experts assigned to the task by the dominant majority in society. Rather, they are a genre of social issues which need new forums for resolution – from the funding and recognition of local bodies to carry out essential local tasks to the development of a regional marine management strategy to negotiation of new constitutional provisions at national level. In this work there are no experts, only processes in which many talents – 'expert', non-expert, wildly emotional or stoically-experienced in the school of hard knocks – are needed. Future conferences should have recognised these facts, accepted them, and be starting down the road to solutions with indigenous people firmly in charge.

Reference

Jull P & Roberts S (eds) 1991. *The Challenge of Northern Regions*, North Australia Research Unit, Darwin.

2

THE RECONCILATION PROCESS

Pat Dodson, Chairman, Reconciliation Council†

This gathering represents the tremendous growth that has taken place quietly and strongly over the years in a concern for the rights of Aboriginal people. Many have played their part and are no longer with us. I pay a tribute to those who have carried the burden and struggled against enormous repression and opposition and who have handed on to us the responsibility to see that indigenous people are established in their proper place in this nation.

The development of places like Australia, the United States and Canada is based on the genocide that followed the visit of Christopher Columbus to America. On Columbus Day in the United States people rarely stop to think that there were an estimated 80 million native Americans in North and South America before Columbus. By 1650, about 150 years later, 95% of these people had been wiped out. The same sort of thing followed Captain Cook's visit in 1770 to Australia.

Captains Cook's cottage was shipped to Melbourne brick by brick. On a plaque giving him the credit for 'discovering' Australia a kangaroo is acknowledged but not the indigenous people. By what right do 'invaders' lay claim to those systems and values of those people who exercised political, economic and legal control over land and language?

All indigenous people have suffered throughout history. Governments, in making laws for the well-being and good order of their populations, either excluded indigenous peoples by pretending none live there (eg *terra nullius* in Australia) or acted to their detriment by forbidding children to speak indigenous languages, breaking up families, stealing land, relocating them, or taking away their systems of social and political control. Added to this both plant and animal pests and diseases were introduced that degraded the land and exterminated the people. This made it easier for governments to fundamentally and radically interfere with the inherited and inherent rights of indigenous people. Regardless, the will of the indigenous people to survive and to refuse to conform to or accept all the designs of governments – often dreadful and callous – still exists.

Now the High Court has recognised native title under British common law but many Aboriginal groups can no longer assert their claims or establish their rights. Whether and how governments should pay compensation for past losses and injustices, and

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† Pat Dodson has written a related paper entitled 'The Road Ahead' which will be available shortly in *Constitutional Change in the 1990s* edited by R Gray, D Lea and S Roberts, NARU, Darwin.

working out how to proceed, still have to be decided. It is all a huge challenge as there has been little trust and confidence in governments doing the 'right thing' by indigenous people. Many people are aware of the token promises and fruitless consultations of the past.

Now the Council for Aboriginal Reconciliation provides an opportunity to try and find a way through some of the past hurts and to try to find ways that disadvantages may be overcome, and promises made in the past may become realities. To this end, the twenty-five members of the Council have adopted a vision and will work towards its adoption across the nation by the year 2001. It calls for a united Australia that respects the land, values Aboriginal and Torres Strait Islander culture, and provides justice and equity for all. The Council has worked out a three year strategic plan to guide us through the process of reconciliation. That plan will be available once it has been tabled in the Federal parliament.

I should [make] it clear that the Council of Reconciliation is not the government, we do not support the government's views.
(Pat Dodson, in discussion, 30 September 1992)

Reconciliation does not need to wait until the year 2001. Its meaning and expression will be found when people begin to work together to improve relationships between indigenous and other Australians. The Strategic Plan (DPMC 1992) sets out eight key issues as a focus for the education that needs to take place to bring all Australians together in a spirit of mutual respect, to ensure that existing high levels of ignorance and prejudice should be overcome, and to gain the following:

- a greater understanding of the importance of land and sea in Aboriginal and Torres Strait Islander society;
- better relationships between Aboriginal and Torres Strait Islander Australians and the wider community;
- recognition that Aboriginal and Torres Strait Islander culture is a valued part of Australian heritage;
- a sense for all Australians of a shared ownership of their history;
- a greater awareness of the causes of disadvantage that prevent Aboriginal and Torres Strait Islander people from achieving fair and proper standards in health, housing, employment and education;
- a greater community response to addressing the underlying causes that currently give rise to the unacceptably high levels of custody for Aboriginal and Torres Strait Islander people;
- agreement on whether the process of reconciliation would be advanced by a document of reconciliation; and
- greater opportunities for Aboriginal and Torres Strait Islander people to control their destinies.

The Council seeks to work towards an agreement on reconciliation and to educate the public about these issues over the next three years.

In 1993 the Council will seek in a structured way the views of indigenous people and other sectors of the Australian society about reconciliation and later we shall review the process.

In the past indigenous peoples in this country received recognition and benefits because other Australians thought it might be a charitable thing to do. Because of the Mabo decision, there is a greater responsibility placed upon non-indigenous Australians to accommodate these rights.
(Pat Dodson, 30 September 1992)

In the past indigenous peoples in this country received recognition and benefits because other Australians thought it might be a charitable thing to do. Because of the *Mabo* decision, there is a greater responsibility placed upon non-indigenous Australians to accommodate these rights. While offering great opportunities and challenges it also has the potential to create or continue the conflict. If we are able to work together in mutual respect and honesty, we shall be able to tackle these matters. Then, maybe reversing trends over the last 200 years, the voyages of Cook and Columbus may not have been entirely disastrous for indigenous people.

Reference

DPMC (Department of the Prime Minister and Cabinet, Aboriginal Reconciliation Unit), 1992. Council for Aboriginal Reconciliation: Triennial Strategic Plan 1992–93, 1993–94, 1944–95, AGPS, Canberra.

3

SURVIVING COLUMBUS
THEMES AND VARIATIONS

Peter Jull, Senior Research Fellow, North Australia Research Unit
(now Consultant, Author and NARU Associate)

The use of the name Columbus in this conference has made some people wonder. The reason that we used the concept was simply that 500 years ago, Columbus sailed from Europe and thought he was going to Indonesia and ended up in the Caribbean. Because of that, a lot of people all around the world are looking back and saying, 'Well, it has now been 500 years since European peoples have been in touch with indigenous peoples on other continents.'

The history has been pretty grim. Pat Dodson has reminded us that 95% of the indigenous peoples of North and South America were wiped out in the years after Columbus's first voyage. The people who are here today certainly were not wiped out. After 500 years we have to join in the discussions going on in the world at large about how we can improve things for the future.

There are people here representing indigenous peoples around Australia. All are looking to the future. It is probably a good thing that at this conference we have just had the *Mabo* case, because the *Mabo* decision destroys the basic principles of Australian indigenous policy in the past. Today it is really a whole new ballgame. That is what we are looking at, at this conference. Most of the people here want to talk about, 'What do we do now? We have learned a lot from the past; we have had bitter experiences. So, where do we go?'

It seems to me that although different groups here in Australia and other countries have made many steps, when you look at all their ideas there are three that are especially important for what we want to talk about.

First is the need to confirm indigenous rights. When people came here from Europe they were operating beyond the law of their own country, but they also refused to acknowledge that the people who already lived here – whose descendants are here today – had laws and rights. It is therefore especially interesting that now, even in the white man's law, indigenous rights are acknowledged through the *Mabo* decision. That decision recognises that there are laws and rights in the different territories where you come from.

Having land and re-establishing your rights to land and sea areas are fine, but as some of you have learned already, the problem with that is that if there is nothing else – if there is nothing that goes with it – it limits your ability to re-establish yourselves in the way you want.

So, the **second** thing we are talking about at this conference, after rights, is what I call self-government. By that I mean the ability of indigenous people, living wherever they are, to have the power and the financial and other resources necessary for doing something with the land, with the sea, and determining their lives for the future. It is fine to have a piece of land, but unless there is funding for services, it is very little.

One of the other speakers will be telling you how self-government is now being established in the Canadian constitution and how a national arrangement on funding will, I believe, be worked out in the next couple of years.

So, we have talked about rights and self-government as the first two items, but the **third** one – which you can call culture, or identity, or pride – is the important condition which makes the others work. It makes you know who you are and want to be, and what you want. I think that has been one of the biggest failures holding back indigenous people in some areas.

In one country a lot of aboriginal people formed a special organisation to oppose aboriginal rights. They said, 'If we have aboriginal rights the white communities will not like us – they will be angry.' This organisation got together and actually went around trying to prevent the mainstream aboriginal organisations from arguing for rights. Of course, a funny thing happened with this. After a few years of people having meetings to say 'We do not want to have our rights as an aboriginal people!' But after all, the only thing that brought them together in that room was the fact that they were an aboriginal people. Before long, they started developing an aboriginal rights agenda, especially for the coastal and marine areas of their homeland, and now they have formed not only a vigorous organisation, but are working more closely all the time with the mainstream aboriginal organisations. The divisions between those who favoured rights and those who opposed them is now ending. The government of that country is now being forced to deal seriously with aboriginal issues.

That is an important lesson for us because as long as there are obvious divisions in the viewpoints of indigenous people about aboriginal rights, government will always use it as an excuse to do nothing. They can say, 'Oh, well, indigenous people do not really know what they want, so we had better wait until they are all ready.' This is interesting because the Prime Minister, the Chief Minister of the Northern Territory, the Premiers of the States – none of them has 100% backing, and yet they have the police, they have the legal system, they have all the power and all the money they want to do what they want. But, it is nothing like 100% and very rarely is it even 50% who support them. So I think we should have things in perspective.

There are only two further things I would like to say. In this question of reconciliation – and I think 'reconciliation' is a word that has come into use now, and that people are familiar with it – some people, especially white people in Australia, think that reconciliation means being nice. They think that you tiptoe around and have lunch with an Aboriginal, or go to the movie with a Torres Strait Islander, and you talk nicely, or you buy a piece of indigenous art and that is being nice, and that somehow this is going to make the world a better place.

I think that is very naive. If you look at the white man's tradition – and we should, because it is the white community that has the most trouble understanding this – the

white community's tradition is founded on two things. It is founded on the Hebrew tradition in the Old Testament and the Greek tradition, in the years before Christ in ancient Greece. The Hebrew prophets who were the pillars of the society, as it is looked back on now, were usually attacking the society, and attacking the leaders in society. They certainly were not quiet people being nice to each other. They had very strong views about the way to go and a lot of their discussions were angry. That is the kind of discussion they had with their people.

Things were not easy. They had big issues to discuss. It was the same with the Greeks. The three great Greek philosophers who are studied by first year students in the Australian universities ... these guys were not lovely people that the government was rushing to give medals to. These were people, one of whom was killed by the government, one of whom cleared out before he was killed ... and the other one had very difficult relations.

So I think we should remember that dealing with the issues we are talking about in 'reconciliation' means that sometimes voices are going to be loud, sometimes they are going to be angry, but, if society is going to change its attitudes, it cannot be done in secret. These are things that have to be talked about, and have to be argued out, so that the white community understands them so that the indigenous communities get what they want (and not what somebody thinks they might want).

So I think we should remember that dealing with the issues we are talking about in 'reconciliation' means that sometimes voices are going to be loud, sometimes they are going to be angry, but, if society is going to change its attitudes, it cannot be done in secret. These are things that have to be talked about, and have to be argued out, so that the white community understands them so that the indigenous communities get what they want (and not what somebody thinks they might want).
(Peter Jull, 1 October 1992)

To sum up, what we are really talking about at this time is that at a moment when Australia as a country is looking at the celebration of its constitution, the anniversary in 2001 of 100 years of the Australian constitution, what we are talking about at this conference is constitutional as well. We are talking about constitutions that are new. The indigenous people had their own constitutions, their own social rules, their own laws, and many of them are still operating.

What you are doing today is the same as what Australia is doing: you are *re-constituting* the structure and form in ways you want to live for the future and the values that you want to live by. You are drawing on past experience and you are rebuilding. I think that re-constitution is a very important thing in Australia and I

think that we have to understand that indigenous people are an important part of it. It is not just something that some white lawyers are doing down south. It is something that you are doing in your societies and, you are doing it even more fundamentally, because in a white society there are a few people called constitutional lawyers who go into a room and worry about these things and talk a language that most of us do not understand. However, what you are doing is more basic. What you are doing is what the new countries in Europe are doing, and what others are doing elsewhere in the world, and that is saying, 'Here we are, today. We have had bad experiences; we have some experience with outsiders telling us what to do; we are now re-developing our own society; we are asserting our culture; we know who we are and what we value. Now we have to rebuild our political society so we can take advantage of the opportunities and defend ourselves from the threats within Australia and in the world today.'

The strength of your position is probably best summed up in the decision of the High Court in *Mabo* – that the rights of the Murray Islanders were there in the face of the whole world! I think that all you people know who you are and know your rights. Now it is a case of re-constitution so that in 2001 there is not just a white Australian constitution, but that the various indigenous peoples around Australia also have constitutions. In nine years a lot can be done.

4

NATIONAL PRACTICE AND INTERNATIONAL STANDARDS

Frederik Harhoff,
Associate Professor of Law, University of Copenhagen†

What takes place in Australia in regard to indigenous people is not very different from national practice in other parts of the world. That includes the Scandinavian countries and one of their former north Atlantic colonies, Greenland, that I want to talk about today.

After the decolonisation process was nearly completed in the 1960s, the rights of indigenous peoples, within both the metropolitan countries and their former colonies, were ignored. They were not given options about sovereignty, self-government or much else. The near ending of colonisation left a situation where a number of indigenous peoples around the world had to establish new relationships with the states in which they lived.

The time has now come when the international community is carefully watching what is going on and is ready to address issues involving the enhancement of indigenous peoples' culture and their rights. To some extent governments and many corporations realise that it is in their own best interests to do so. Total cultural values of the world will be a lot poorer if nothing is done and, in the face of land degradation and environmental pollution, people are realising that physical and cultural environments are two sides of the same coin: they cannot and should not be separated. Our relationships with nature have much to do with our relationships between ourselves.

It is very important that people in northern Australia know what is going on in other parts of the world. (Frederik Harhoff, 1 October 1992)

It seems to me that most indigenous people – and today I speak on behalf of the Inuit of Greenland – share a common experience with other indigenous people. Their culture has been devastated, they have lost their language, partly lost their history, and their identity has been threatened.

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† Professor Harhoff has written a related paper entitled 'Regions and peoples – some trends in international constitutional practice' which will be available shortly in *Constitutional Change in the 1990s* edited by R Gray, D Lea and S Roberts, NARU, Darwin.

International law, too late for many, has slowly started to face these issues. International law has produced a few but important instruments – declarations and conventions – about indigenous people and self-determination. We should not be fooled into overestimating their power. They cannot force states to act beyond their will; they cannot induce rights of indigenous peoples directly in domestic law; and they are unable to include ethical values. However, international law can advise states and present arguments that can motivate and inspire them to protect indigenous peoples and their cultures. International law can also provide control by watching and exposing what is going on in states that do not meet international norms of behaviour. Relationships between the Federal and State governments of Australia and Aboriginal people, as well as the legislation that is passed, are carefully watched and followed elsewhere in the world. Do not be mistaken. Just as Australians look at human rights and the internal performance of other states, the rest of the world – and particularly its indigenous peoples – is very interested in what is happening here.

Do not be mistaken. Just as Australians look at human rights and the internal performance of other states, the rest of the world – and particularly its indigenous peoples – is very interested in what is happening here. (Frederik Harhoff, 1 October 1992)

Since Columbus by mistake reached the American continent in 1492, there have been three ways of thinking about, and dealing with, indigenous peoples as Europe expanded outwards into Asia, Africa and the New World. From 1492 to the middle of the 17th century there was enslavement, exploitation of minerals (especially gold and silver), conquest and, to some extent, conversion. A few, mainly clerics, held that native peoples had rights to lands and possessions, should be protected from violence, and had indigenous political systems. The dominant view was that European states, mainly Spain and Portugal, had absolute rights and that what actually happened was part of God's order. Natives were part of a divine order and discussions revolved around 'natural law'. The debate, such as it was, took place in Europe while the action took place in the Americas.

The next period, as reflected on the American continent, ran from the mid-17th century until the United States and Canada, both the products of British colonialism, were established in the mid-18th century. The conflict was now solely on the American side of the Atlantic Ocean. The question was how the new states could establish fair and viable relations with the natives. This was a very practical issue of drawing borders between white settlers and native societies as the settlers expanded. Essentially natives had to yield to white expansion.

The third and last scenario was about the quest for national security but also human rights. In Europe there were many cultures and languages, and the treatment of ethnic and religious minorities had caused a number of armed conflicts so the conflict was

different from that in the United States where whites confronted 'natives'. In Europe, one country would say security was threatened or its minority population in another state was being subjected to human rights abuses so they went to war. Of all the wars that were fought in Europe, minority issues were central in every case. Issues involving minorities were always addressed in peace treaties in Europe. So in this century in Europe there has been a growing interest in the problems of minority peoples and in protecting their rights. Security and human rights are the most fundamental and important aspects when we discuss self-determination today.

An important international instrument was the so-called 'Declaration 1514 on the Granting of Independence to Colonial Countries and Peoples' which was adopted by the General Assembly of the United Nations on 14 December 1960. One of the first provisions of this Declaration highlighting both security and human rights was:

> the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights and is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and cooperation. ... All peoples have the right to self-determination. By virtue of that right, they freely determine their political status, and freely pursue their economic, social and cultural development.

The next international instruments worth highlighting are the United Nations Covenant on Political and Civil Rights of 1966 and the Covenant on Social, Economic and Cultural Rights. These were basically products of the Cold War. The Eastern Bloc said that it was no good having rights to vote if people could not feed themselves in a secure social environment. The Western Bloc maintained, on the other hand, that political and civil rights were the necessary basis for social and economic improvements. This distinction was much debated and led to two separate instruments being adopted. Both instruments started by declaring that all peoples have the right to self-determination.

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

Thirdly, the International Labour Organisation Conventions of 1957 were revised in Convention No. 169 dealing with indigenous and tribal peoples in independent countries. Article 2 of this states:

> That governments shall have the responsibility for developing, with the participation of the peoples concerned, coordinated and systematic action to protect the rights of these peoples, and to guarantee respect for their integrity. Such action shall include measures such as ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population.

This revised convention has been recently adopted by the ILO.

Finally there is the draft declaration on indigenous people which is at present being discussed by the United Nations Human Rights Committee and which hopefully will be adopted soon. This also deals with questions of self-determination for indigenous peoples but, like other declarations, there are no clear definitions of what 'self-determination' and 'peoples' imply. Self-determination is a category of rights rather than a single right. It includes a range of rights from full independence to sets of rights that may vary from one country or region to another. What is suitable or possible in the Northern Territory of Australia would not necessarily be what the Inuit

of Greenland or the Baffin Region in Canada would like to see. The concept must be applied with flexibility.

We should not be discouraged that there are on-going discussions and no dramatic breakthroughs with these issues. There is a will by many to settle the issues and to have 'self-determination' clearly included in international law. States are being forced to address indigenous peoples' rights, and the rights of indigenous peoples cannot be disregarded. Basically there is a right of constant improvement. Countries wishing to establish conditions that represent a deterioration of positions already established are in violation of international law. In Greenland, for example, the Danish government wanted to rescind part of the Home Rule arrangement. When it was pointed out that such a move was in contravention of international law, they refrained.

International law will not solve every problem but more and more states accept the rationality of self-determination. Countries wishing to remain accepted by the international community can no longer use force and violence, and matters have to be settled with the participation of the people concerned.

Greenland has a population of about 52,000 people of whom 10,000 are Danish sojourners and the rest Inuit, who have the same culture and a similar language to other Inuit societies around the Arctic rim. At the end of World War II, Greenland was still a colony of Denmark closed to the outside world. When oil concessions were granted in the early 1970s, Greenlanders unsuccessfully protested because if oil were found the oil fields would be in the middle of the Greenlandic fishing banks. Fortunately oil was not found so the issue then died down.

International law will not solve every problem but more and more states accept the rationality of self-determination. Countries wishing to remain accepted by the international community can no longer use force and violence and matters have to be settled with the participation of the people concerned.
(Frederik Harhoff, 1 October 1992)

Later Denmark joined the European Community and took Greenland in with it. Greenland is very remote from Europe and very non-European and Greenlanders were not consulted. This provoked the Greenlanders to speed up their struggle for self-determination. Negotiations with the Danish Government were started in 1975 and completed in 1978 with the enactment of the Greenlandic Home Rule Act. This is a Danish piece of legislation so the Greenlanders have not been able to adopt a constitution of their own.

Home Rule implies a transfer of legislative and administrative powers from Denmark to Greenland. A Greenland Parliament was established to legislate on all areas of local importance to Greenlanders. These areas are the regulation of fisheries, social

services, health, trade, taxation and so on. Only defence and foreign policy remain in the hands of the Danish government. An agreement could not be reached about who owned mineral rights, so a joint Danish/Greenlandic board was established to decide on every issue concerning mineral resources.

In conclusion it is important to establish that if the indigenous people in this country, or in any other country where indigenous people exist, are going to have a decent future, cooperation and communication between interested parties are essential. Non-indigenous people in particular have to accept that cultural and spiritual values are very important and have to be respected – anything less culturally impoverishes us all.

In particular, it is essential that we keep up the pressure for government to recognise the international right of self-determination. In the end, no government can maintain that indigenous peoples should give up their land and yield to industrial expansion so that indigenous cultures will ultimately vanish.

Bibliography

Cobo JRM, 1986. *Study of the Problem of Discrimination Against Indigenous Populations*, United Nations, Geneva.

Hannum H, 1990. *Autonomy, Sovereignty and Self-Determination: The Accommodation of Conflicting Rights*, University of Pennsylvania Press, Philadelphia.

5

THE WORLD OF SUSTAINABLE DEVELOPMENT AND THE 1992 EARTH SUMMIT

Tony Simpson, International Consultant

The relationship between the indigenous peoples of Australia and the other peoples of Australia has at least two international dimensions. Firstly, the historic and continuing relationship is between different nations and peoples; in that sense it is truly international. Secondly, the rest of the world is concerned about the relationship between the indigenous peoples of Australia and other Australians. International is not over there: international starts here in Australia. In this context, I will briefly refer to some aspects of the notions of sustainable development and the 1992 Earth Summit in Rio de Janiero (the Rio Conference).

Sustainable development consists of a series of concepts which hold that change, human activity and development concern the survival of the planet and its cultures as we know them. It is obvious that existing technologies, economies and lifestyles are a grave threat to such a future.

When the United Nations General Assembly established the Earth Summit it stated that it was:

> Concerned by the continuing deterioration of the state of the environment and the serious degradation of the global life support systems, as well as by trends that, if allowed to continue, could disrupt the global ecological balance, jeopardise the life-sustaining qualities of the earth and lead to ecological catastrophe. ...[The Assembly recognises] that decisive, urgent and global action is vital to protecting the ecological balance of the earth (United Nations General Assembly Resolutions 44/228).

The Earth Summit took over two years to plan. Thousands of people, including representatives of governments as well as those from the broader community, met in hundreds of meetings to discuss and negotiate how to effectively integrate environmental concerns with the demands of human material existence and resource use; 'development' if you like. They considered the interrelatedness of the physical, cultural, ecological, social, political and economic issues and prepared position statements and recommendations. Themes dealt with included ecological security and survival, economic activity and analysis. This attempt to integrate the human and non human worlds is not new to indigenous societies but it did involve a challenge to the mind sets and values of the modern, technological and materialist world.

To a large extent much of the hard work, the negotiations and drafting of positions, conclusions and outcomes took place during the two years before the conference. There were four major preparatory meetings which hammered out deals, so it would

be true to say that much of the outcome of the Earth Summit was not actually negotiated in Rio itself. Indigenous peoples' issues were dealt with at the preparatory meeting in March/April in New York before the Earth Summit. At Rio much of the activity was cosmetic.

At the Earth Summit hundreds of papers were given and volumes were produced containing recommendations and policy suggestions. Formally there were two international treaties signed, one relating to global warming and another relating to the protection of bio-diversity. These treaties contain binding provisions to arrest species destruction and the catastrophic global warming and other climatic change issues. These treaties were negotiated and finalised at the conference and 154 countries signed them immediately. They will hopefully enter into force by the mid-1990s.

The other formal outcomes of the Earth Summit were interrelated. Firstly, there was a Statement of Principles called the 'Rio Declaration'. Unfortunately national governments were unable to agree on a planned document which was proposed to be called 'The Earth Charter' which would have been stronger and more visionary. However, the Rio Declaration does contain some very important principles which link the economy with the environment while recognising the interrelationship between Third World poverty, the debt system, over-consumption in the rich world, over-population, and an unjust world economic order. It challenged some of the basic materialist notions of the modern, western, technological world.

Western society has tended to divorce itself from the natural world which it has tried to dominate. Indigenous approaches and thinking accept the oneness of people and their environment – the interconnectiveness is obvious. We in the western world are trying to refind, rediscover and repair the alienation.
(Tony Simpson, in discussion 1 October 1992)

The Principles form the basis of a plan of action which covers a whole range of issues such as pollution of the oceans and fresh water, the atmosphere, the degradation of land by agriculture, pastoralism and urbanisation. The relationship of human activity and the environment is looked at in each of these areas with a varying degree of detail and a varying degree of success.

Woven through the action plan called Agenda 21 and in the Statement of Principles, there are sections on indigenous issues. They are not strictly legal rights; they say little about the aspirations of indigenous peoples as generally understood. Opponents of indigenous rights from some countries lobbied to ensure that strong international standards were not adopted which might affect their negotiating positions in their own countries.

Countries such as India, France, Malaysia, Canada, and Indonesia fought hard against indigenous rights arguing, disingenously, amongst other things, that all their citizens were equal in their rights and nationality. The ferocity of the opposition of countries such as Canada and France was surprising. Canada misguidedly was probably trying to dampen or minimise the negotiation stance of Canadian indigenous peoples in the context of the renegotiation of the Canadian constitution.

Although the Earth Summit outcomes were not impressive, woven throughout the documents are issues that indigenous groups will be able to use and build on – the 'right of constant improvement' that Professor Harhoff mentioned earlier. Further, new UN machinery has been set up to monitor and to implement the complex decisions made.

In late 1992 a body called the Commission of Sustainable Development was created by the United Nations General Assembly with the power to review the extent to which countries have implemented the obligations they entered into. They cannot be forced but can be pressured, influenced, cajoled, embarrassed and shamed. In Australia in the field of international environmental law and policy, a non-governmental advisory committee was established which will advise the government on the implementation of its undertakings. Indigenous representatives are included on that advisory body.

Did the conference meet the challenge it set itself? And how can the conference rhetoric be translated into reality or action? It cannot be emphasised enough that what happened at Rio challenged the barriers created by modern materialistic mindsets. People who normally did not speak together realised they had common problems. There was a new sense of a shared fate and that the fate was looking fairly dismal if a 'business as usual' approach was taken. The outcome of the conference was a blueprint for action. This is no substitute for the action itself which must take place in communities, towns, rural areas and where people are.

6

THE GENEVA PROCESS AND WHAT IT CAN MEAN FOR AUSTRALIA

Mick Dodson, Director, Northern Land Council
(now Commissioner, Social Justice Commission)

Geneva in Switzerland was originally the headquarters of the United Nations and is still the base of many UN and other world agencies. When we talk about the 'Geneva process', we are talking about indigenous peoples' involvement in the United Nations.

In September 1981 a United Nations agency called the Sub-Commission on the Prevention of Discrimination and Protection of Minorities made a decision that they would set up a working group for indigenous populations. This decision was endorsed in March 1982 by the Commission on Human Rights, a body responsible for all the various instruments or written guide-lines having anything to do with human rights and fundamental freedoms that the UN has passed over time. This decision in turn was approved in May 1982 by the Economic and Social Council (usually called ECOSOC) that was set up by the General Assembly of the United Nations. This structure means that at the top of the hierarchical ladder you have the General Assembly, then ECOSOC, then the Commission on Human Rights, then the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, and right at the bottom rung come the blackfellas.

The Economic and Social Council authorised the working group to do two things. The first involved reviewing developments each year from countries that are member nation states of the United Nations. ECOSOC said that the working group was authorised to let indigenous people come to Geneva each year and tell the group what happened in each of their countries each year. At the same time these delegates were to report on two particular questions that were referred to them by the Secretary-General of the Commission on Human Rights. The first involved looking at how treaties between nation states and indigenous peoples were working, how they were being implemented and how they were being monitored: this included looking into the questions relating to intellectual and cultural property.

The second major task of the working group was to set internationally acceptable standards about indigenous rights and freedoms and how nation states should deal with them. Hopefully when this document is written it will be a strong statement which will seek to protect the human rights and fundamental freedoms of indigenous peoples. Further it will acknowledge and protect indigenous peoples' inherent collective rights which are different from individual human rights that the rest of the world understands as fundamental freedoms.

Although this is a complicated and very bureaucratic process taking place at a relatively lowly level, what is going on is given a great deal of importance by member states of the United Nations. Internationally what is going on is a start. The UN is a place where indigenous people can go to express their views, not only about what is happening in their countries on a year-by-year basis, but it also gives indigenous people an opportunity to express their aspirations, to express their ideas about what should be acceptable standards as far as indigenous people's rights are concerned.

There are only five members of the working group and none of them are indigenous people and none of them are appointed by indigenous peoples or their organisations. They are all appointed by governments. The Chairperson is Mme Erica-Irene Daes who is a government appointee from Greece. The other members are Mr Alfonso Martinez from Cuba, Professor Hatano from Japan, Mrs Attah Attair from Nigeria and Mr Chernichenko from the Russian Federation. Even though they are not indigenous people – and this represents further isolation from an indigenous viewpoint – they are largely sympathetic to indigenous concerns and attuned to indigenous aspirations.

The term 'self-determination'... means more in international law than the way the term is used in Australia and will have the United Nations members ducking for cover.
(Mick Dodson, 1 October 1992)

Having made the point that the working group is at the bottom of the UN ladder and there is no attempt to allow indigenous people to be a party to the make-up of the working group there is another problem. Governments containing indigenous peoples often present ferocious opposition, particularly to the standard-setting exercise. In practice, most governments are vehemently opposed to indigenous people enjoying the same rights and fundamental freedoms of other people because of their own internal agendas. For example the working group is called 'the working group on indigenous populations'. Over the ten year life of the working group the debate has raged between governments and indigenous peoples and their representatives about the use of the term 'populations'. In international legal circles it has a very different meaning to the terms 'people' or 'peoples'. This is important because it shows how governments attempt to erode the inherent collective rights of indigenous people. This battle was lost also in the ILO Convention 169.

There is also massive opposition on the question of self-determination. The present Draft Declaration on the Rights of Indigenous Peoples states in the preamble:

> Indigenous peoples have the right of self-determination in accordance with international law by virtue of which they may freely determine their political status and institutions and freely pursue their economic, social and cultural development. An integral part of this is the right to autonomy and self-government.

This does not represent the language that was, by and large, preferred by the indigenous peoples from the floor but the important thing is to include the term 'self-determination' which means more in international law than the way the term is used in Australia and will have the United Nations members ducking for cover.

It may surprise you to know that Australia has strongly supported the use of the term 'self-determination'. All other states, with few exceptions, have tried to limit the definition and turn it into something different and something that will not be an evolving and dynamic concept. Countries like the United States and Canada are also trying to define other terms such as 'indigenous peoples' so that definition should be sufficiently precise to give rise to identifiable and practical rights and obligations. None of these things are defined in other international instruments that deal with human rights and fundamental freedoms. It seems to me that the approach of some governments in respect to indigenous rights is that indigenous peoples are not entitled to enjoy the same rights as anybody else or to express their inherent collective rights because they are, in some way, second class citizens.

The opposition to the draft declaration is also to do with the question of the control of land and resources. There has been strenuous opposition to the articles in the draft document that deal with indigenous peoples' control of land, their territories, their marine estates, and land and sea resources.

It seems to me that the approach of some governments in respect to indigenous rights is that indigenous peoples are not entitled to enjoy the same rights as anybody else or to express their inherent collective rights because they are, in some way, second class citizens.
(Mick Dodson, 1 October 1992)

In 1992 there were 615 people at the meeting representing 120 indigenous organisations, only ten of whom had consultative status which means the right to speak under UN rules. Fortunately the first chairperson and the first secretary established precedents that give most people the chance to speak. For example, 116 people spoke under the agenda item 'review of developments'. Each time someone speaks it is translated into eleven different languages, none of which are indigenous languages. There are frustrations but indigenous peoples now have a forum on the world stage where they can now go and express their views, announce their aspirations, fight for their inherent collective rights, fight for their individual human rights and their fundamental freedoms.

7

CANADA'S NUNAVUT
AN INDIGENOUS NORTHERN TERRITORY

John Amagoalik, Nunavut Inuit Leader†

When I first arrived in Australia, I looked at a map of the area and I noticed two islands just to the north of Darwin – one is called Bathurst Island and the other is called Melville Island. If you look at a map of Canada, in the high Arctic, very close to where I grew up, there is an island named Bathurst Island and right next to it is an island called Melville. I note also that Sir John Franklin was once Governor of Tasmania. After Tasmania, Franklin came to my homeland but never made it out. Though Sir John Franklin did not survive the Arctic we survive Columbus. In many ways we have a common history.

The Inuit of Canada number about 30,000. Our homeland covers one-third of Canada. The Inuit of Canada started to organise around 1970, after oil was discovered in Prudhoe Bay in Alaska. It was around that time that multinational companies and governments suddenly 'discovered' the Arctic. Before that, it was usually referred to as a wasteland where nobody lived.

As recently as four years ago there were certain people in positions of influence who were suggesting that nuclear and toxic waste should be stored in the Arctic because nobody lived there. These 'nobodies' are now changing the course of history in Canada.

Around 1970, the Inuit leaders realised that they had to be well organised if they were to have an effective voice. Six regional organisations were formed and they came together to form a national organisation, the Inuit Tapirisat (Council) of Canada. These organisations had the responsibility to do research, to put together a land claims proposal and to begin negotiations. They also had the enormous task of educating the Canadian public.

In the early stages the obstacles were numerous. We faced reluctant governments who had little or no policy in regards to land claims. We faced a poorly informed and sometimes hostile public and we had little support from our own people. Things started to change after the *Calder* case (in 1973) which forced the reluctant governments to start formulating policy on land claims. The *Calder* case also gave new life and energy to the aboriginal movement in Canada. A massive information campaign began across the whole country which took many years. We were involved

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† Prior to this address, Mr Amagoalik made a presentation (speaking in both Inuit and English) of a book on caribou (Calef 1981) and the very large Nunavut Atlas (Riewe 1992). Both books are held in the NARU Library.

in cross-country tours. I visited every nook and cranny of the country speaking to people, the media and whoever would listen.[1] We started a campaign of media exposure through newspapers, television and radio. We lobbied political parties, different organisations; we went international, we went to Buckingham Palace, and we worked with the international media.

It was during this period that aboriginal leaders exerted the most effort and time to change public opinion. It was also during this time that people like myself had to dedicate most of our waking hours to land claims. Things began to change. The public came on our side, the native people themselves began to give strong support to their leaders, and government policy started to improve. This intense period of hard work had a price. Many of our leaders were burned out and there were many casualties along the way. Some lost the battle against drugs and alcohol and some families broke up under pressure. We lost some of our most brilliant people – Mark Gordon and Bob Kadlun to name two.

This intense period of hard work had a price. Many of our leaders were burned out and there were many casualties along the way. Some lost the battle against drugs and alcohol and some families broke up under pressure. (John Amagoalik, 1 October 1992)

The first modern treaties were signed in northern Quebec in 1975 and the Beaufort Sea region in 1984. The most comprehensive agreement was reached in Nunavut in December 1990 and ratified by the Inuit and the Canadian Parliament in 1992.

Once legislation has been passed, implementation of the land claims will begin immediately. The transition process towards a new territory of Nunavut with its own government will also begin.[2] This new territory will officially come into existence on 1 April 1999. Getting our own government did not come easy. In the beginning the government insisted that we could not include political development in the land claims process. The Inuit insisted right from the beginning that it had to be part of the final agreement and in the end our insistence won out.

The new territory will cover about one-fifth of Canada. It will be a public government for all the people (about 85% of whom are Inuit) living in the area regardless of their race. In effect the Inuit will have control but everyone will have the same rights and responsibilities.

I should say something about the Canadian constitutional reform process in relationship to aboriginal issues. The Canadian constitution was patriated from England in 1981. After that, the process to amend the constitution began for it has to reflect the realities of the 20th century. Four constitutional conferences took place to

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1 While in Darwin Mr Amagoalik had many talks with Aboriginal and Islander leaders and gave a number of radio, television and press interviews.

2 See Jull 1992.

deal with aboriginal issues and they all failed. But the national exposure from the highly publicised television meetings between ourselves, the Prime Minister and all the premiers of the provinces, resulted in the solidification of public support of aboriginal aspirations and the understanding of the issues.

When we first met with the Prime Minister and the premiers in 1982, we might as well have been on two different planets because we were so far apart. Now that wide gulf has gone. On 28 August 1992, the Federal Government, all the provinces and territories, and the aboriginal leadership were able to reach an agreement on a reformed constitution. This proposal to reform Canada's constitution included provisions recognising our inherent right to govern ourselves, and provided for future negotiations to implement that right. Unfortunately, that proposal was rejected in a national referendum held in October 1992. Inuit, however, voted overwhelmingly in favour of the proposal. This does not end the matter. Inuit and other aboriginal peoples will continue to press for constitutional recognition and entrenchment of our rights. (The *Nunavut Act* and *Nunavut Land Claims Agreement Act* passed through Parliament and into law in mid-1993.)

We had to be united, we had to have the support of our people. Our struggle was long and difficult but it was worth it because it was the right thing to do. (John Amagoalik, 1 October 1992).

In conclusion, I want to note some similarities between what we have gone through in Canada over the past 25 years and what is beginning to happen here. The *Mabo* case could be compared with the *Calder* case. The plan to reform the constitution in Australia by the year 2001 may be similar to our process in Canada. I can tell you from our experience in Canada, the reform process takes time and effort, it takes patience and determination, it takes sacrifice, it takes organisation and tenacity. There are no short-cuts around public opinion. We had to be prepared to play political handball when necessary; we also had to be pragmatic and reasonable. We had to be united; we had to have the support of our people. Our struggle was long and difficult but it was worth it because it was the right thing to do.

Bibliography

Calef GW, 1981. *Caribou and the Barren-lands*, Canadian Arctic Resources Committee, Ottawa.

Jull P, 1992. *An Aboriginal Northern Territory: Creating Canada's Nunavut*, Discussion paper 2, North Australia Research Unit, Darwin.

Riewe R (ed), 1992. *Nunavut Atlas*, Circumpolar Research Series No. 2, Canadian Circumpolar Institute, Edmonton, Alberta.

8

MABO JUDGEMENT: IMPLICATIONS

Garth Nettheim, Professor of Law,
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The *Calder* decision in 1973 in Canada (Calder v Attorney-General of British Columbia [1971] 13 DLR [3d] 64) is very similar to the *Mabo* decision in Australia but there is one important difference: the *Mabo* decision is more dramatic for Australia because, at least in Canada, there had been recognition of aboriginal rights through treaties. Treaties covered much of Canada, though not, of course, in the northern parts where treaties are being negotiated now. In the same way in the United States, we could say that back in the 1820s in *Johnson v McIntosh* ([1823] 8 Wheaton 543), and some other American cases (known as the Marshall cases after the then Chief Justice), the United States courts recognised not only the territorial rights of native Americans but their political rights as sovereign nations within the United States. *Mabo*, however, like the *Calder* decision, is the start of a process of litigation and negotiation.

In our English-based law system, issues involving rights, conflicts over resources, resource development and land tend to come to the courts initially. In the late 1960s, the Commonwealth government negotiated a lease to the Nabalco consortium of companies to mine bauxite on land which the Yirrkala people said was their land. When the Yirrkala people got nowhere with parliament and the government, they went to court. In Darwin in the Gove land rights case of 1971 (Milirrpum v Nabalco Pty Ltd [1971] 17 FLR 141), the Supreme Court presided over by Justice Blackburn said in a very long judgment that there was no such thing in Australian law as native or Aboriginal title. The *Mabo* decision of June 1992 (Mabo v Queensland [1992] 175 CLR 1) held that the Blackburn decision was wrong. For Aboriginal and Torres Strait Islander people the natural reaction is to say: 'What is all the fuss about? The High Court has merely said what we have known all the time: it always was and always will be Aboriginal land.' Non-Aboriginal and non-Islander people, however, are confused for it has overturned everything they understood about land law, this country and its origins.

It may help if we think about three sorts of law applying to Aboriginal and Islander issues in Australia and we must put them all on the same level. On one side we have Aboriginal and Islander law under which indigenous people have rights and obligations. The rights relate to territory, waters, fish, culture, self-government – the right to control things that are important. In the middle is Australian law which, like Canadian, American and New Zealand law, is an off-shoot of British law. On the other side is international law which, in fact, greatly influenced the High Court in the *Mabo* decision.

Australian law breaks into two parts. First there is the law of the Commonwealth (eg the NT Land Rights Act) and then State or Territory law. Each of these also breaks into two parts. The first is written law arising from legislation. The other part is called 'common law'. Common law started off by being customary law. Hundreds of years ago in England, law was mainly about reinforcing custom in different parts of the country. When England started becoming united, the King appointed judges who travelled the country and settled disputes on the basis of the customs. These different customs changed and developed and became common to all parts of the country. That is why they are called 'common law'. Unlike countries such as Denmark, Germany and France, the British never wrote all the law into one single code. They always left large areas of the law for the judges to continue to develop. Decisions were written down as records of what judges decided in the past. They are not laws enacted by parliament but are the precedents which express the development of custom and it keeps on changing and developing.

Australia was the one country that had not recognised through the courts Aboriginal law and the land rights that people have under Aboriginal law.
(Garth Nettheim, 1 October 1992)

What the judges do when they make a decision like *Mabo* is to say: 'We are laying down what the law is and what the law has been.' They found that Australia was out of step with other countries that emerged from British colonial rule. This was the one country that had not negotiated treaties with indigenous people. This was the one country that had denied, at least until the referendum of 1967, that Aboriginal and Torres Strait Islander people were of any concern to the national government. Until 1967 power to pass laws for indigenous people was left to the states and territories, and we know with what result. Australia was the one country that had not recognised through the courts Aboriginal law and the land rights that people have under Aboriginal law.

In the Gove case of 1971, Justice Blackburn said that as he read the Canadian cases, and the cases from British courts in Africa and Asia and so on, pre-existing rights did not survive the lands becoming British, unless the British and their government formally recognised them.

A lot of people, including many non-Aboriginal lawyers, thought Justice Blackburn was wrong but the case was not appealed because, in the 1970s, governments started to pass laws giving people in some parts of the country land rights.

One of the best of these laws is the *Aboriginal Land Rights Act (Northern Territory)* enacted in 1976 by the Commonwealth parliament. It returned existing reserves to Aboriginal people and allowed Aboriginal people to claim certain other types of land as theirs under Aboriginal law. South Australia passed good legislation for the Pitjantjatjara lands and reasonably fair legislation for the Maralinga lands. There were many different attempts in other parts of the country but things in Queensland and Western Australia remained pretty bad.

In Queensland between 1979 and 1981 Premier Sir Joh Bjelke-Petersen talked about repealing the old Aborigines Act and of granting Deeds of Grant in Trust (DOGITs) under the existing Land Act. In 1981 there was a conference in Townsville – a conference something like this 'Surviving Columbus' conference. A number of people were there including Eddie Mabo who lived in Townsville. Eddie was one of the Meriam people and he talked about the land holding systems on Murray Island. Greg McIntyre, a lawyer working for the Aboriginal Legal Service in Cairns, Nugget Coombs, Nonie Sharp and others were there. What happened during a break in the proceedings was that these people came together and discussed whether a successful case could be brought to the courts to overturn the Gove decision and to acknowledge indigenous land rights at common law. Eddie Mabo then instructed Greg McIntyre to start what became known as the *Mabo* case.

It started with the lodging of documents in May 1982 and it took just over ten years for the Court to come to a decision. It almost got killed off by the Queensland government. They decided that, as the Murray Islanders were arguing under common law that the Gove decision was wrong, they could override common law with legislation. They passed a special act in 1985, the *Queensland Coast Islands Declaratory Act*, designed to kill the *Mabo* case. What it said was that in 1879 when the Islands became part of Queensland, not only did the Islanders lose their sovereignty[1] and come under the governance of Queensland but they also lost any rights which they might have had to land. The plaintiffs had to respond to this challenge and, by the narrowest of majorities – four against three – the judges of the High Court of Australia held that the Queensland Act was ineffective because it took away rights to land and inheritance based on Meriam law while leaving intact rights to land and inheritance based on general Queensland law. This offended the Racial Discrimination Act. So the *Mabo* case continued.

The finding of facts was remitted to the Supreme Court and a judge spent over a year listening to evidence, going to Murray Island, thinking about what he was going to write. He eventually found most of the facts in favour of the Murray Islanders. The case was then returned to the High Court which listened to arguments, spent a year deciding on what it was going to say, and then in June 1992, by six against one, held that the Murray Islanders did own their land 'against all the world'.

The judges made it quite clear that the judgment applied to all Aboriginal and Islander people in Australia. They held that the general understanding on which European settlement was based, namely that there 'was nobody here' or, if anyone was here, they did not have any rights worth recognising, was wrong. They looked at three or four Australian cases in which judges had quite strongly said that when Australia became British any pre-existing rights were wiped out, and said that these

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1 The question of sovereignty came up in question time. Professor Nettheim said that in the *Mabo* case the judges held that it was not open to the court to dispute the sovereignty of the Australian nation, and the plaintiffs did not argue against the sovereignty of Australia. American courts, however, have recognised Indian tribes such as the Navajo as sovereign nations within the overall sovereignty of the United States. There is no reason why there should not be a similar movement towards a similar recognition of the Arunta, the Yolngu or Pitjantjatjara peoples for example. The idea of a subordinate level of sovereignty exists already in the Australian federal system. The Australian states and territories claim to have certain sovereign authority.

earlier decisions did not face historical facts and were wrong. The judges also looked at all the cases involving indigenous peoples from Canada, the United States, New Zealand and, from the Privy Council and the English courts, from Africa. Although all these cases say different things, it became clear that when lands became British that fact, by itself, did not extinguish pre-existing rights of people under their law.

These rights continue, unless and until the government extinguishes them and this is always a possibility. But it is a great breakthrough to be told that the Australian court system acknowledges Aboriginal and Islander law. While the Court could not decide what individuals owned particular holdings, they could decide that the Murray Islanders as a group continue to have their system of law and their system of land holding. Any disputes about individual bits of land have to be sorted out by Murray Islander law and according to their processes.

What the judges have done is to say that Australian Common Law, properly understood, leaves space for Aboriginal and Islander Law.

What the judges have done is to say that Australian Common Law, properly understood, leaves space for Aboriginal and Islander Law. They decided only about land law and land rights and did not get to discuss offshore rights – obviously important to the Murray Islanders – or subsoil resources. But they did say that whatever Aboriginal title is depends on the laws of the people themselves. If there are people there, their rights to land, once they are defined according to their own law, continue to exist until they are extinguished. Extinguishment is a real problem. They conceded, as with the Canadian and American courts, that the government of the country has the ultimate power to extinguish the rights of indigenous peoples.

Justice Toohey for one played this down. He said 'Governments have the right to take anybody's land, whether you are indigenous or not' for public purposes. But they also have a fiduciary duty to indigenous people. This is a doctrine that has emerged over the last twenty years, particularly in the Canadian Supreme Court, and means that governments have a trust obligation that is legally enforceable to use their power in the interests of the people. So there are lots of ramifications to be worked out. The basic point is that the *Mabo* case turns Australian law, as Australian lawyers have understood it, on its head. Aboriginal and Torres Strait Islander rights and law (and that probably includes culture and government as well), exist until extinguished. It is no longer necessary to go to court and prove that with a ten year legal battle. It may be enough in many parts of the country where indigenous people seem to have title, for them simply to say it is their land, and leave it to the Government or mining companies to prove the contrary if they can. There is still much work to be done in all parts of Australia.

In the meantime governments, mining companies and other interests are in a state of uncertainty. Some may be ready to negotiate seriously with indigenous people. Maybe in some areas such as the Kimberley, the Torres Strait Islands and Arnhem Land, there may be the possibility to negotiate regional agreements such as the Inuit

have managed in Canada. While the Aboriginal Land Rights (Northern Territory) Act has been a fairly good act for the people it benefits, most people know that other people have not benefited. Some of those people, such as those on pastoral leases, may now have a better chance of getting access to land under new agreements.

9

THE NUNAVUT AGREEMENT

THE ENVIRONMENT, LAND AND SEA USE AND INDIGENOUS RIGHTS

Terry Fenge, Executive Director,
Canadian Arctic Resources Committee†

Introduction

I would like to take you briefly through some of the major provisions of the Nunavut Agreement (DIAND and TFN 1992) that has recently been concluded by Inuit of the Northwest Territories (NWT), and the federal government of Canada. A contract specifying how the agreement will be implemented, and the financial implications of implementation, is scheduled to be completed in 1993.

The Nunavut Agreement is a modern treaty which deals with land ownership, natural resource management and conservation, wildlife harvesting and management, and economic development. It further provides for the creation of a new territory – Nunavut – with its own territorial government. The agreement deals hardly at all with social and cultural issues, which are to be addressed by the Nunavut government.

As John Amagoalik has already spoken about the political provisions of the agreement, I will deal only with land, natural resources, wildlife and economic development.

The Nunavut Agreement

A Nunavut Agreement (DIAND and TFN 1992) defines rights and benefits to be accorded to Inuit, which are guaranteed under the Canadian Constitution. In exchange for these rights and benefits, Inuit are ceding the Crown:

> ... all aboriginal claims, rights, title and interests, if any, in and to lands and waters anywhere within Canada and adjacent offshore areas within the sovereignty or jurisdiction of Canada ... (DIAND and TFN, 1992)

This is not a step taken lightly. Nevertheless, Inuit seem prepared to pay the psychological cost of 'surrendering' their aboriginal title to the Crown (Fenge

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† Dr Fenge submitted a full paper to the Conference entitled 'Political development and environmental management in northern Canada: the case of the Nunavut Agreement'. This paper is available at a cost of $5 plus postage from the North Australia Research Unit in Darwin as Discussion paper No. 20.

1993b). We shall know one way or the other in November 1992, for this is when the Nunavut-wide land claim ratification vote is to be held.

At the end of my paper, I will give you my personal views as to how it proved possible for Inuit – a small minority in a large country, far removed from Ottawa – to conclude such a substantial agreement with the federal government: the Nunavut Agreement will change the constitutional and political face of the country. You should note that Inuit concluded the agreement with a federal government composed of members of the Progressive Conservative party. It was this same government that in 1986 reformed its land claim policy, so making the agreement possible (Merritt & Fenge 1990). Indeed, it is worth quoting the federal government's land claim policy (DIAND 1986) which at face value is quite laudatory. The policy looks forward to land claim agreements that:

> ... encourage self-reliance and economic development as well as cultural and social well-being. Land claim negotiations should look to the future and should provide a means whereby aboriginal groups and the federal government can pursue shared objectives.

Land ownership

Inuit are to own just over 136,000 square miles in fee simple. Of this, some 14,000 square miles include rights to oil, gas and minerals. Inuit do not use nor do they visit the Queen Elizabeth Islands in the far north and west of the Nunavut Settlement Area, and they were unable to assert aboriginal title to this region. It was a moot point, then, how the Queen Elizabeth Islands would be dealt with in the Nunavut Agreement. The outcome is that all provisions of the agreement, with the exception of those relating to land ownership, apply to these islands. (Inuit may decide on future development there which will benefit Nunavut as a whole, for instance.) As a result, Inuit are to own just over 18 per cent of the area over which they assert aboriginal title, and approximately 16 per cent of the Nunavut Settlement Area.

Figures tell only one part of a complicated story. Of central importance to Inuit was that the agreement provide them with title to the 'best' land in Nunavut. This usually meant land of highest biological productivity, favoured hunting, fishing, and trapping sites, grave sites, archaeologically interesting areas, coastal sites, and zones of high potential for minerals. Inuit had little interest in owning land covered with icefields and glaciers. Nor were they prepared to forego owning land just because it was encumbered by third party rights, such as mining claims and leases.

The rules to guide land ownership negotiations, and the amount of land to be owned by Inuit, were defined in an agreement-in-principle, signed in April 1990. Land ownership negotiations were concluded in 1991. As a result, Inuit are gaining undisputed title to proven reserves of gold, silver, uranium, lead, and zinc. Most, if not all, proven mineral reserves on

land selected by Inuit are held under leases issued to mining companies by the Crown. Once the Nunavut Agreement is ratified, Inuit will become the landlord to these companies. This has not aroused the ire of mining companies, many of whom look forward to dealing with Inuit rather than government. (Terry Fenge, 1 October 1992)

The rules to guide land ownership negotiations, and the amount of land to be owned by Inuit, were defined in an agreement-in-principle, signed in April 1990. Land ownership negotiations were concluded in 1991. As a result, Inuit are gaining undisputed title to proven reserves of gold, silver, uranium, lead, and zinc. Most, if not all, proven mineral reserves on land selected by Inuit are held under leases issued to mining companies by the Crown. Once the Nunavut Agreement is ratified, Inuit will become the landlord to these companies. This has not aroused the ire of mining companies, many of whom look forward to dealing with Inuit rather than government.

Of course, whether these mineral deposits will ever be developed is an open question, dependent primarily upon world prices for metals. It does seem likely, however, that lead and zinc deposits in the Kitikmeot region, some of which are to be owned by Inuit, will be developed in the late 1990s.

The agreement provides generous rights of access and entry to agents of government, members of the general public, and resource developers who need to enter and cross land owned by Inuit. The agreement also honours existing resource use rights of third parties on Inuit land. In consequence, development of non-renewable resources could proceed on Inuit owned land in the future, even if Inuit object.

Land and natural resource management

Though Inuit are to own much land in Nunavut, the majority of the land is to remain in the hands of the Crown. Quite early in the process, Inuit recognized that this would likely be one outcome of negotiations. Inuit wished to exert as much control as possible over the use and management of Crown land. Government offered Inuit the right to advise on the use and development of Crown land. This was unacceptable to Inuit, who argued that if they were to cede to the Crown their aboriginal title to land, then the management rights acquired in exchange would have to be meaningful. Not until the land claim policy was reformed in 1986, did government accept the proposition that it should share authority with aboriginal people to manage Crown land.

As a result of Inuit negotiating strategy and government policy changes, the text of the Nunavut Agreement deals in detail with the make-up, powers, jurisdiction, and decision-making procedures of new institutions to manage land and natural resources. In particular, the agreement defines the relationship between these yet-to-be-established resource management boards, and ministers of the Crown who, it should

be noted, retain 'ultimate' authority for resource management. These boards, upon which Inuit and government are to be equally represented, will be the key decision-makers in land management and land-use planning; they will assess the environmental and social impacts of development, and regulate the use of freshwater, as well as having jurisdiction in marine areas.

Wildlife harvesting and management

Inuit remain highly dependent – economically, socially and culturally – upon wildlife harvested from both marine and terrestrial environments. Not too surprisingly, the agreement deals at length with wildlife harvesting and management. Inuit have the right to harvest wildlife virtually anywhere in Nunavut, regardless of who owns land. Wildlife harvesting rights apply within national parks and conservation areas. Indeed, this is an important corollary, because the agreement establishes three national parks in Nunavut (Fenge 1993a).

A Nunavut Wildlife Management Board (NWMB), again composed of an equal number of Inuit and government appointees, is established through the agreement. This board is to administer the wildlife harvesting allocation priorities defined in the agreement, and is to have a significant, but not deciding, role in managing wildlife habitat. Like the boards that manage land and natural resources, the NWMB is to have jurisdiction over marine as well as terrestrial wildlife. This makes sense. In Nunavut, the ocean is frozen for much of the year, and Inuit treat the ocean as an extension of the land.

Economic development

The agreement specifies ways to involve Inuit in economic development. Inuit have the right to negotiate jobs and benefits packages with would-be developers of minerals, oil, and gas – but this right is restricted to situations in which Inuit own the surface of the land and government owns the sub-surface. The agreement aims to provide Inuit with additional jobs in the public service, and to award Inuit firms a 'fair share' of contracts issued by the federal and territorial governments. Inuit are to receive a share of royalties that the federal government obtains from development on Crown land, but this is unlikely to exceed $1.5–$2.0 million per year.

One provision is of particular interest: the agreement provides Inuit with capital totalling just over $1.1 billion, paid over 14 years. This money is to be paid to the Nunavut Trust, established under federal law. The investment priorities of the trust are yet to be defined, but the trust deed establishing this institution requires it to act in a 'prudent' manner: the money is unlikely to be treated as venture capital.

How was it done?

Why is it that the Nunavut Agreement was concluded, while others flounder? From the vantage point of non-aboriginal advisor to TFN, I offer the following reasons:

1. *Political unity*

   Notwithstanding the inevitable stresses and strains of negotiation, Inuit leaders from Baffin, Keewatin, and Kitikmeot regions of Nunavut remained politically

united. In contrast, Indians of the Dene Nation, to the west and south of Nunavut, split asunder in 1989–91 as a result of pressure emanating from their land claim negotiations. This negative example probably helped Inuit appreciate more clearly the need for political unity as a prerequisite to achieving a final agreement.

2. *Clarity and consistency*

   Inuit politicians and the land claim negotiating team were consistent in the positions that they tabled, and supported their demands with logical arguments. Invariably, Inuit gave government clear signals about what they wanted and why they wanted it. As a result, the final agreement bears considerable similarity to the land and resource management proposal first tabled with government in 1982.

3. *Institutional base*

   In 1982, Inuit transferred the mandate to negotiate their land claim from the Inuit Tapirisat of Canada (ITC), the national Inuit organisation that deals with a wide variety of issues affecting Inuit throughout Canada, including Quebec and Labrador, to the Tungavik Federation of Nunavut, an institution whose sole purpose was to negotiate a land claim agreement for the Inuit of Nunavut. This move concentrated the attention of key regional politicians on the agreement as it evolved, and made it easier to maintain consistency of argument and policy preferences.

4. *Positive agenda*

   Very early in negotiations, Inuit put forward a positive agenda designed to solve problems. Like other aboriginal peoples, Inuit harboured grievances about past and continuing action by government, such as the relocation of Inuit in the 1950s from northern Quebec to the high Arctic Islands. However, they did not allow these grievances to poison the atmosphere of negotiations, and get in the way of concluding an agreement. Grievances related to non-land claim issues were dealt with by other Inuit organisations, away from the land claims table.

5. *Drafting*

   By and large, Inuit kept their hands on the drafting pen. By forcing government to react to their positions, Inuit were better able to set and control the negotiations agenda. Inuit drafted positions quickly and responded to government's positions with alacrity. Government, on the other hand, had onerous and time consuming interdepartmental consultations to conduct on many issues. While Inuit were consistent in their positions, they did compromise on a number of issues, such as the land ownership quantum. The ability to compromise, when necessary, was interpreted as a sign of political strength rather than weakness.

6. *Good staff*

   Inuit hired well-qualified, positively motivated, and hard-working staff. They also managed their staff well. The relationship between staff, many of whom were non-aboriginal, and the Inuit leadership and Inuit staff was generally good.

7. *Practical agenda*

Inuit tried hard to draft positions based on practical, pragmatic thinking. Over time, negotiations became less adversarial, as both parties searched for ways and means to improve natural resource decision-making in Nunavut. On the other hand, some topics, such as capital transfers, were adversarial through and through.

8. *Inuit style*

Inuit maintained a courteous, polite and cool demeanor throughout most negotiations. This reinforced the practical focus of negotiations, and encouraged government to respond in kind. Inuit learned very early that the language and style of the barricades and protest march could get you to the negotiating table, but not beyond it. Ideology and rhetoric were kept to a minimum, as they were found to be of little value in furthering negotiations.

9. *Government's team*

While federal ministers of Indian Affairs and Northern Development came and went in the 1980s, the federal chief negotiator – a Saskatoon-based lawyer – represented government for nearly 10 years, as did his senior negotiator, a full-time civil servant. The continuity promoted clarity and consistency of position on the part of government. The government's negotiating team exhibited considerable professionalism, and approached issues seriously and with diligence.

10. *Proud Canadians*

Many people in southern urban centres maintain a positive stereotype of Inuit. This resonated, in part, in the 1980s when Inuit portrayed themselves as guardians of Canada's sovereignty over the waters of the Northwest Passage, which were and still are characterised by the United States of America as international waters. In doing this, Inuit portrayed themselves as proud Canadians, which they are. This contrasted in the minds of many Canadians to the posture of some Indian groups in the south, who claim to be sovereign themselves. As a result, Inuit reaped public relations benefits. If government could not strike a deal with Inuit – proud Canadians all – with whom could it strike a deal?

At the signing of the agreement-in-principle in April 1990, Inuit took Tom Siddon, the new minister of Indian Affairs and Northern Development and his wife, out on the land overnight. In subsequent months and years, the minister frequently referred wistfully to this experience, and to his personal admiration for Inuit. This small gesture, through which Inuit gained the personal attention and sympathy of a busy, desk-bound minister, paid large dividends.

11. *Environmental stewardship*

Inuit characterised land claim negotiations as the best way to improve environmental management and wildlife conservation in the Arctic. As environmental issues climbed to the top of the national political agenda, peaking probably in the 1990, so did the Inuit land claim.

12. Financing negotiations

Inuit borrowed nearly $40 million from the federal government to research and negotiate the Nunavut Agreement. Without this largesse, Inuit would not have been able to participate in negotiations.

Conclusion

Only time will tell the full story of the Nunavut Agreement, for the real test lies in implementation not negotiation. Canada's history is rife with treaties made and broken. Inuit leaders will need to be vigilent, to hold the federal government to promises made. Certainly, all now acknowledge the need for education and training for Inuit, to ensure that the administrative jobs that result from the implementation of the agreement are not all held by recent arrivals to the north.

On paper, there is little doubt that the Nunavut Agreement is the most far-reaching of the modern treaties negotiated between aboriginal people and the Canadian government. To breathe life into the agreement, Inuit leaders will require continued clarity of vision.

References and further reading

DIAND (Department of Indian and Northern Affairs), 1986. Comprehensive Claims Policy, Ottawa, Minister of Supply and Services.

DIAND and TFN (Tungavik Federation of Nunavut) 1992. Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty in Right of Canada, Ottawa.

Fenge T, 1993a. National parks in the Canadian Arctic: the case of the Nunavut Agreement, *Environments* **23**(1), 21–36.

Fenge T, 1993b. Political development and environmental management in northern Canada: the case of the Nunavut Agreement, *Inuit Studies* **16**(1–2), 115–141.

Fenge T, 1993c. *Political Development and Environmental Management in Northern Canada: The Case of the Nunavut Agreement*, Discussion Paper No. 20, NARU, Darwin.

Jull P, 1992. *An Aboriginal Northern Territory: Creating Canada's Nunavut*, Discussion Paper No. 9, NARU, Darwin.

Merritt, J & Fenge T, 1990. The Nunavut Land Claims Settlement: Emerging Issues in Law and Public Administration, *Queen's Law Journal* **15**, 255–277.

10

INTRODUCTION TO THE MARINE WORKSHOP

Monica Mulrennan, Postdoctoral Fellow, North Australia Research Unit
& Co-ordinator of Marine Strategy for Torres Strait
(now Dept Geography, McGill University, Montreal)

The theme of the workshop was the control and rights of indigenous communities, particularly Torres Strait Islander communities, in relation to marine and coastal environment and resource management.

The Marine Workshop comprised a relatively small group of about forty people and included a diverse range of perspectives, expertise and backgrounds. There were over twenty Torres Strait Islanders present, mostly ICC members, in addition to representatives from government agencies such as the Australian Nature Conservation Agency (formerly Australian National Parks & Wildlife Service), Great Barrier Reef Marine Park Authority, Queensland Department of Environment and Heritage, the Parliamentary Research Service, Aboriginal and Torres Strait Islander Commission, and the Australian Fisheries Management Authority.

Mr Getano Lui (Jr) chaired all but the final session of the workshop during which Dr Terry Fenge took over to conduct the more open workshop discussion. After welcoming participants to the Marine Workshop, Getano explained that the idea of the workshop was to provide an opportunity to sit down in an informal setting and have some open discussion about indigenous marine and coastal related issues. He explained that as the Torres Strait Islanders are currently developing a Marine Strategy for Torres Strait they were particularly open to any advice or suggestions that the workshop could provide in relation to the development of the strategy. He said:

> This workshop provides a valuable forum for us all to exchange experiences and knowledge – I hope that you will avail yourselves of the opportunity to the greatest extent possible.

The format of the workshop involved paper presentations by key speakers followed by general discussion and questions. The major papers are presented here as separate chapters, together with some of the workshop discussion.

Particular attention was given to the recognition of 'sea rights' in Australia; the potential value of international support and contacts; and current Commonwealth initiatives regarding protection of the marine environment (eg. Torres Strait Baseline Study), and indigenous interests and involvement in coastal and marine environments (Resource Assessment Commission Coastal Zone Inquiry).

The final session took an open workshop format during which the group discussed the processes that might be involved in developing a Marine Strategy for Torres Strait.

11

SALT-WATER DREAMING†

David Allen, Legal Adviser, Northern Land Council

It has been said that 'white-man got no dreaming'. I disagree. In the beginning of the white-fella's world – in the Western JudeoChristian tradition – God divided the land from the waters. This had a deep impact on the conceptual construction of the world and the law-story about ownership of the land and the sea, and waters generally. Its repercussions today affect the prospects of Australian common law recognising ownership of indigenous marine estates – salt-water country.

The elemental division between earth and water proclaimed in the Book of Genesis helped shape the landscape of legal concepts which enabled the easy flow into the English common law of pre and post Christian Roman civil law. The first written record of the legal status of the sea is found in a text of the second-century Roman jurist Marcianus which states that the sea and its shores are common to all men. The writings of Cicero, Seneca, Paulus and Ovid continued this line of reasoning, where nature is thought to dictate that the sea must have the status of *res communes*: a category of things incapable of becoming the subject of private ownership.

I suggest that the primary task in achieving the legal recognition of the sea-water component of indigenous estates is to make them understood, comprehensible, to non-indigenous people. (David Allen, 1 October 1992)

That famous old Junggayi of the English common law, Blackstone, asserted in his Commentaries that 'water is a moveable, wandering thing and must of necessity continue common by the law of nature' (Blackstone, Commentaries (10th ed. 1878) ii cap 2, 18). This is the dreaming of the white-fella's common law. The absence of any exclusive, private property in running water and the sea is constructed not merely as a convenient social rule: it is seen as originating in the law of nature, it stemmed from the inherent character of the world and the elements of creation.

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† This paper was submitted as an appendix to a paper entitled 'Some shadow of the rights known to our law', at the Turning of the Tide Conference at the Northern Territory University 14–16 July 1993. It was published in December 1993 in the proceedings of that conference.

Commercial fishermen slinging out their nets off the coast of Bamaga and Numbulwar are fairly unlikely to appeal to the Book of Genesis or the Commentaries of Blackstone, but they and recreational fishermen in Beagle Bay and elsewhere have a deep sense of their right to be there and to enjoy the common property of the seas. In contrast the traditional Aboriginal owners of these waters sit on the coast and watch the salt-water country of their grandfathers used without any power to protect their country, to control its use, or to benefit from it.

I suggest that the primary task in achieving the legal recognition of the sea-water component of indigenous estates is to make them understood, comprehensible, to non-indigenous people.

The character of the Aboriginal spiritual and economic relationship to land is well established in Australia. A recent demonstration of respect for the significance of country, in spiritual terms, was the Federal government's decision to prevent the mining of Coronation Hill. It was a decision based on regard for indigenous cultural values and was made in hard economic times against the powerful lobbying and economic arguments of resource developers. However, it was a decision won by a hair's breadth. And it was won in the face of concerted efforts to discredit and devalue the integrity of the Jawoyn's relationship to their land.

The assertion of rights in respect of the sea has equal implications for the control and use of resources. However, it is compounded by an even more profound cultural disjunction between those who sit on the shore looking out over their customary marine estates and those who sit on the water exploiting them.

This disjuncture is well illustrated by the work of Father Angelo Confalonieri, a Catholic Priest who lived at Port Essington (on the Cobourg Peninsula) from 1846 to 1848. He named and mapped the estates of the local people – referring only to their land holdings. Earl, in 1846, described clan groups in the same area. He too made no mention whatsoever of the extensive marine estates which lace through the waters off north-west Arnhem Land. Today, those waters remain equally vacant to the eyes of the vast majority of non-indigenous Australians. What is it that eludes recognition? The traditional estates of coastal and island people do not finish at the shoreline. Aboriginal dreaming tracks flow out over the seas embracing tidal areas, offshore reefs and islands, forming an indissoluble link with the land.

What is it that eludes recognition? The traditional estates of coastal and island people do not finish at the shoreline. Aboriginal dreaming tracks flow out over the seas embracing tidal areas, offshore reefs and islands, forming an indissoluble link with the land. (David Allen, 1 October 1992)

The journey of the Djanggawul sisters follows a path from the Gulf of Carpentaria, past Groote Eylandt, Bickerton Island, Caledon Bay, Blue Mud Bay, on to the land in

east Arnhem circling and looping up into north-east Arnhem Land offshore to Elcho Island, Howard Island, back onto the land and so on into western Arnhem. It is an organic line of creation of great spiritual significance, studded with sacred sites, linking different estates and marrying land to sea within individual estates. There is an equal responsibility to care for sites in the sea as for those on land. The same dangers arise from the desecration of sites whether on land or in the sea.

Further, the salt-water country of coastal and island groups is of immense economic significance. It is the prime basis of their subsistence. The knowledge of tidal waters, reefs and channels is exact and critical in terms of food resources. Ownership and management responsibilities control access to the use and the distribution of all marine resources. Dietary surveys of indigenous coastal communities establish that sea foods continue to provide a very high proportion (up to 75%) of protein intake. The sea not only supplies high quality protein: hunting, fishing and gathering along tidal zones provide productive occupation. These activities are the occasion for the transmission of cultural knowledge and provide the means through which kinship obligations relating to the distribution of food can be fulfilled.

The boundaries of salt-water country are well defined, frequently marked on the coast by river channels or prominent geographical points. They can extend many kilometres offshore. The general term employed to describe ownership of salt-water country is CMT: Customary Marine Tenure. In an excellent report prepared for the Ecologically Sustainable Development (ESD) Fisheries Working Group by John Cordell, entitled 'Managing Sea Country', CMT in Australia is described as:

> ... closely bound up with kinship, traditional law and authority, and other structures that shape cultural identity, such as myths, totems and taboos, and storyplaces in the sea. Clan or family leaders essentially act as trustees for group land and sea holdings, assisted by elders and other important people who live in core ancestral areas. The power to distribute and manage the use of collectively owned resources, to make economic decisions and channel entrepreneurial activity resides with the custodians who are empowered to speak for the territory they represent.
>
> ... Although no system is typical, depictions of CMT in Arnhem Land and Torres Strait show how sociocultural systems, belief and territorial systems tend to be interwoven (Cordell 1992, 109).

In relation to the particular claim of indigenous people to recognition of CMT in fisheries management, Cordell (p.129) makes the seminal point:

> They are a special group of stakeholders, marginalised and displaced by colonialism, trying to hold on to what's left of their traditional homelands. Their *cultural* survival, not simply their subsistence livelihood, depends on local environments and wise management of the remaining ancestral resource base.

Recognition of salt-water country is not only inextricably related to the just recognition of property rights, it is essential to the future integrity of indigenous culture. It is ultimately an existential question: as intimate as a fingerprint.

In the words of Mick Yarmirr, a senior man from Croker Island:

> I wouldn't stay inland, I wouldn't lose the sea. Might go for a few days, back and forward. I'm an island man, not frightened of the waves. We, Aboriginal people believe that all human beings go together with the land and sea. If we have land, and no sea, we will die. If we have sea and no land, we will die. If we have land and sea, people will live free (Mick Yarmirr, Croker Island Sea Closure Application Book, Northern Land Council).

We, Aboriginal people believe that all human beings go together with the land and sea. If we have land, and no sea, we will die. If we have sea and no land, we will die. If we have land and sea, people will live free.
(Mick Yarmirr)

It's an idyllic vision – which breaks against the reality that Australian law makes no recognition whatsoever of CMT.

The strongest legislative provision of any indigenous right in relation to the sea is found in the *Aboriginal Land Rights (Northern Territory) Act 1976*. Section 73(1)(d) of this Commonwealth Act states that the Legislative Assembly of the Northern Territory has the power to make:

> laws regulating or prohibiting the entry of persons into, or controlling fishing or other activities in waters of the sea, including waters of the territorial sea of Australia, adjoining, and within 2 kilometres of, Aboriginal land, but so that any such laws shall provide for the right of Aboriginals to enter, and use the resources of, those waters in accordance with Aboriginal tradition ...

At its highest, this is a non-exclusive right of access and use of marine resources within a 2 kilometre zone off the coast of Aboriginal land. The character of use is confined by tradition. The policy origins of this legislation are interesting. They are found in the Second Report of the Aboriginal Land Rights Commission published in April 1974. The Commissioner stated at paragraph 422 that, despite accepting the authenticity of traditional claims to islands, estuaries, bays and surrounding seas, up to 12 miles off the coast, he was:

> ... unable to endorse a claim to an area of sea as great as twelve miles from the coast. It seems to me that the legitimate interests of Aborigines will be protected if their traditional fishing rights are preserved and their right to the privacy of their land is clearly recognised by the establishment of a buffer zone of sea which cannot legally be entered by commercial fisherman or holiday makers. An exception would have to be made in the case of emergencies (Aboriginal Land Rights Commission 1974, 77).

The Land Commissioner went on to select, in his own words, 'some arbitrary figure' of 2 kilometres for the buffer zone. He contemplated that Aboriginal users would be subject to fisheries regulations and, finally, the Commissioner characterised the protection extended to Aboriginal land owners as a 'privilege'.

Even though the claim to salt-water country was accepted as authentic, it was rejected. The 2 kilometre zone was extended largely to provide a buffer zone ancillary to the possession of land. Further, the only means of protecting this 2 kilometre zone from open access by all comers is to make application for a sea closure of the area under the *Aboriginal Land Act*, a piece of Northern Territory legislation.

Application must be made to the Executive of the Northern Territory Government which has a discretion to grant a closure following receipt of a report from a Land Commissioner. The application is assessed in the light of objections which are inevitably lodged by commercial, recreational fisherman and others. Only 2 closures

have been pursued and granted. There is no effective enforcement mechanism and the essential value of a closure is eroded by the fact that existing commercial licenses continue to operate in closed seas. These licences cannot be sold or transferred, but where they are held by companies, they are effectively perpetual.

The strongest Australian legislative provision grants a non-exclusive right of user – which still provides traditional owners with plenty of opportunity to sit on the beach and watch their home reefs commercially harvested with no power to intervene and no recognised place in fisheries management.

The only operative international instrument to which Australia is a party, and which explicitly refers to indigenous fishing rights, is the Torres Strait Treaty. It is empty of any substantive rights. Australia and Papua New Guinea agreed to ensure the enjoyment of fishing rights:

> ... on conditions not less favourable than those applying to like rights of its own traditional inhabitants.

This is a very strong guarantee of absolutely nothing. The *Torres Strait Fisheries Act 1984* grants the right to traditional fishing inside the Torres Strait Protected Zone – so long as the fisherman is not prohibited from doing so under Commonwealth or Queensland law. In other words, you have no *right* to fish. You may be given permission to fish. Legislation of this character betrays the total absence of legal recognition of traditional marine estates. It also reveals the implications of this lack of legal recognition. Until exclusive interests in the sea, the sea bed and their resources are established in law, indigenous people will remain dependant on the exercise of such privileges to fish as may be granted as a matter of *noblesse oblige*.

The High Court of Australia's decision in the *Mabo* case established principles which may support a claim to exclusive proprietary interests based on CMT. A claim to the sea, sea bed, offshore reefs and marine resources was originally pleaded in *Mabo*. It was strenuously opposed by the Commonwealth. It was ultimately abandoned because of lack of evidence regarding traditional knowledge and use of this marine component of the Murray Islander's domain: that knowledge, and the continued use of salt-water country, certainly exists in significant areas of northern Australia.

If the ambit and content of native title is, in accord with the High Court's principles, to be established by reference to native tradition it must arguably include customary marine tenure. At this point the profound cultural disjuncture which shapes and differentiates indigenous law from the common law may be significant. While native title to land may form a unique genus of inalienable communal title it is undeniably within a class of proprietary interest recognisable at common law. But, can one person or group own the sea?

This may well prove to be an academic point of little significance. Ownership of the sea is not the critical issue. Rather it is recognition of an exclusive right to use and control access to marine resources within traditional estates.

Ironically, because of the traditional common law approach to the communal use of the sea and its resources, the potential danger of a prior extinguishment of native title is far less pronounced. Fishing licenses do not create proprietary interests inconsistent with the continuity of title. The regulatory powers of the Crown, as found in the Canadian *Sparrow* case, may not work extinguishment. Certain sea-leases for aquaculture and petroleum exploitation may be more problematic.

It is not my intention to explore the detailed implications of the *Mabo* principle in application to CMT. The essential point is that these principles provide a potential for the indigenous people of Australia to achieve the substantial gains made by the indigenous peoples of the north-west United States, Canada and New Zealand. In an article which closely analyses the case law and governmental responses in these jurisdictions, Professor Michael Blumm concludes that:

> All these nations now recognise, however belatedly, the common law nature of the right. That is, the right springs from native use and custom from time immemorial, not from Government creation. Constitutional, statutory and treaty recognition of the right may help to interpret the nature of the right or clarify its scope, but they did not create it. The fishing right predated Government recognition, and the common law – which all three nations inherited from England – was fully capable of protecting native customary practices as property rights. It was, in fact, the common law's recognition of native property rights which induced Government action and not vice versa (Blumm 1990, 244).

From the common law's recognition of traditional indigenous interests either exclusive rights of use of traditional marine estates, or priority rights of resource use have been gained. Ancillary to the recognition of these interests have come environmental rights to enforce the protection of fish stocks, other marine resources and their habitats. The recognition of proprietary interests has also compelled recognition of a right to participate in the regulation and management structures affecting traditional estates. In terms of caring for salt-water country these ancillary aspects, of environmental protection and participation in management structures which integrate the general use of marine resources – perhaps these issues are ultimately paramount. For, even in the sea, no man is an island.

The full enjoyment of a traditional estate is vitally dependent on activity outside that estate. In the North American and New Zealand jurisdictions, all indigenous rights are subject to general conservation controls. Participation in joint management schemes can be beneficial to both indigenous and non-indigenous people.

When current Australian marine management systems are inspected they can be seen to be virtually devoid of any Aboriginal or Torres Strait Islander presence. They are certainly barren of any genuine joint management arrangements. The only vehicle for any indigenous participation in fisheries management in Australia is found in the Torres Strait fishery. The decision-making body, the Joint Authority, has no indigenous representative. The Authority is advised by a Management Committee. It has three Torres Strait Islander representatives, and three commercial fisherman and four government agents, and one scientist. An interesting pecking order by numbers.

The Management Committee is in turn advised by a Scientific Advisory Committee and a Fishing Industry and Islanders Consultative Committee. That committee is comprised of seven Islanders and seven commercial fisherman and six government officers. This structure, which reflects no real control over the Islanders' resource, has no legislative basis. It is merely an administrative arrangement devised by the Commonwealth and Queensland ministers for Primary Industry.

In Marine Park management the situation is even more bleak. The Great Barrier Reef Marine Park Act (Commonwealth) makes no reference to Aboriginal hunting or fishing. These may take place, under permit, and subject to further State restrictions. The Great Barrier Reef Marine Park Authority is advised by a Consultative Committee. The first Aboriginal person was appointed to that committee in 1989, 14

years after the establishment of the marine park. The first Aboriginal Liaison Officer was to be appointed in 1992.

The Queensland Marine Park Consultative Committee, which included one Aboriginal person out of 12 members and with no resource allocation to liaise with Aboriginal groups whose traditional estates lie within marine parks, represents the highest level of involvement in any State or Territory marine management system.

Government action at Commonwealth, State, and Territory levels could rectify this immediately. The practical and social justice arguments for the determinative participation by Aboriginal and Islander groups regarding their traditional estates are extremely powerful. But the political will does not exist. As Blumm points out, it was the same in North America and New Zealand: 'It was ... the common law's recognition of native property rights which induced Government action and not vice versa' (1990, 244).

A management role, as of right, with determinative powers (rather than the mere opportunity to make thoughtful suggestions) will not be granted to indigenous Australians until they win recognition of their native property rights.

There is a final point I wish to make concerning the value of common law confirmation of customary marine tenure. Section 73 of the Commonwealth *Aboriginal Land Rights (Northern Territory) Act 1976* grants a non-exclusive right of user 'in accordance with Aboriginal tradition'. Section 53 of the *Northern Territory Fisheries Act 1988* purports to protect this right by reference to the right of Aboriginal people to:

> ...traditionally use the resources of an area of land or water in a traditional manner.

The Commonwealth Act defines the extent of the right by its conformity with Aboriginal tradition. The Territory Act seeks to further combine the right by imposing a constraint on the *manner* in which the traditional right is actually exercised.

In strict interpretation this could lead to a kind of technological apartheid – with Aboriginal people being confined to the use of dug-out canoes, fishing spears and woven nets. In practice, aluminium boats and monofilament lines are accepted – gill nets are not. Apart from presenting the potential to revisit the *Sparrow* case in an Australian context, this draws attention to the danger of confining indigenous people within their tradition – and, more particularly, the notion that Aboriginal tradition had no commercial component, or that a commercial use of a traditional resource base cannot evolve.

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the terms of recognition should also allow people to develop, at their own pace and by their own choice, the full enjoyment of their traditional estates.

The recognition of customary marine tenure is essential to the preservation of traditional culture: but the terms of recognition should also allow people to develop, at their own pace and by their own choice, the full enjoyment of their traditional

estates. That is a right of ownership. It accords with the recent recommendation of the Waitangi Tribunal in New Zealand to grant Maori people extensive interests in the commercial fishery. In the *Maori Council* case, the NZ Court of Appeal was not dealing with the terms of the Waitangi Treaty, but with its principles. One was identified as the obligation of the Crown to deal with the 'utmost good faith': a fiduciary obligation such as that referred to in the *Mabo* case.

In accord with this principle, the Court found that the Crown is not merely restrained from acting prejudicially but is positively required to undertake 'the active protection of the Maori people in the use of their lands and waters to the fullest extent practicable' (New Zealand Maori Council v Attorney General (1987), NZLR 641 at 644).

The Tasman Sea washes the shores of both Australia and New Zealand. When the relative fishing rights of the indigenous peoples of Australia and New Zealand are considered, one wonders what happens in the mid-Tasman? Perhaps that is just another mystery of the white-man's salt-water dreaming.

Discussion

Peter McGinnity: Could a government legislating for native rights inadvertently override or have a negative effect on native title, despite having good intentions?

David Allen: The answer to this question is very interesting, especially with respect to the Northern Territory, because it falls under what I refer to as 'potential benign extinguishment'. The basic theory is that the Crown has sovereignty over the land and a burden on that title is native title. Therefore, if you can prove continuity of tradition you could get native title to it. If the Crown had previously granted that land as freehold, that is had given that land to someone else, or granted a lease over it, then native title would have been extinguished. Dealings in the land which give it out as freehold, or some other form of title, can therefore destroy native title.

Following on from this if you set up a system, such as the Land Rights Act, even though it is beneficial legislation, the fact that the recipients hold title through that system may have destroyed the prior native title. I don't believe that has actually happened – I don't believe that government legislation which establishes title in favour of Aboriginal people extinguishes native title because of the benevolent intention of the legislation.

References

Aboriginal Land Rights Commission, 1974. *Second Report*, AGPS, Canberra.

Blumm MC 1990, Native fishing rights and environmental protection in North America and New Zealand, *Canterbury Law Review* 4, 211–44.

Cordell JC, 1992. Managing Sea Country: Tenure and Sustainability of Aboriginal and Torres Strait Islander Marine Resources, Report on Indigenous Fishing, Ecologically Sustainable Development (ESD) Fisheries Working Group.

12

INTERNATIONAL CONNECTIONS

Peter Jull, Senior Research Fellow, North Australia Research Unit
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One of the problems of talking about indigenous rights is that some people approach the subject as if you have to go out and try to prove that you could have a right to participate in something or to influence a decision by somebody else. That is a difficult and time consuming thing to have to do.

The fact that this workshop has been set up as a discussion on the theme of marine and coastal zone management in the context of land and sea rights, and indigenous self-government – that it is starting from the point where you have land and sea rights in the Torres Strait and the north coastal communities across Australia and the Inuit in the case of Canada, etc. and that self-government is all part of this – is the important thing. It is important because in future you don't want a situation where a right is simply some small fragmentary thing that you as one individual can try to work with – what you need is a situation whereby your organisation, your whole culture, can work with land and sea rights through self-governing institutions, through your ability to make your own choices and make your own decisions about the use of land and sea. This is really where discussion has to develop and where it has already developed in the Inuit case of Nunavut.

If you want to sit down and argue with civil servants for the next fifty years about whether or not you have a right to do something it will take a lot of time but it won't produce anything. That is why it is helpful that the *Mabo* case has cleared the air. One of the most important things about that case is that the High Court decision is not about some little change in the law of Australia. What it is doing is recognising the validity of the rights of the Murray Island people; it is recognising their traditional legal system and saying 'yes that is a valid system and is now part of the law of this continent'.

It is a very significant decision and of course one that is very important for all Torres Strait Islanders and all Aboriginal people. We have now moved on from a situation where our approach with regard to coastal and marine issues was to hope that we could perhaps get some good ideas into the heads of administrators who are looking after projects or to persuade some government department to go out and consult with communities before changing a policy affecting them – those days are over and it's about time. We are now in a situation where indigenous people have legally demonstrated rights.

When you look at the documents signed by Australia, among other countries, at the Earth Summit in Rio in June 1992, in addition to the other international documents

Tony Simpson alluded to in his paper, you are really looking at a change in the world where international agencies and some countries are starting to recognise land, coastal and marine management in northern and remote areas where indigenous people are still living on all or part of their traditional territories. There is a very special obligation for governments to allow and provide the means for indigenous people to govern themselves, to manage resources, to exercise traditional land and sea rights, to use their traditional knowledge and to manage those traditional territories – all these are now on the world agenda.

I noticed in a recent ATSIC document, a request to indigenous organisations for feedback on a recent government report about policy on ecologically sustainable development. The policy quoted in that document was much less than Australia has already committed itself to in Agenda 21, the document which came out of the Earth Summit.

When we talk of international connections, what you can benefit from (as well as the international community through the United Nations) are other countries which are actually practising the sorts of things that you are starting to consider. There is some experience and, likewise, people from other places can learn from you. For instance, some of the features of the Torres Strait Baseline Study are unique and could be shared with others. There are other things happening along the north coast of Australia which would also be worth sharing.

The basic difficulty with this issue of international connections is that although such connections provide a lot of information, ideas and support to the people who can benefit from them, at the moment the only people in Australia who can really benefit from them are wealthy companies such as the mining industry, or governments who can fly ministers and MPs during the Canberra winter to the warm climates of the northern hemisphere. But indigenous people should benefit from these connections too: when officials or ministers go off and find out that in some other countries the governments are being nice to indigenous groups, they are not going to come back and tell everybody. After all then they would have to make some changes in their own policies. In order for indigenous people to benefit from the information available across the world, it means you have to keep up with these things. We are fortunate to have Tony Simpson here with us because he is one of a number of people in Australia who do just that – they keep us informed of various things that are happening in the international community.

It may seem very difficult to keep track of what is happening all over the world, but it really isn't. There are bodies like the United Nations that have regular publications, there are conferences and other documents and catalogues that come through – it is actually relatively easy to keep in touch. The difficult part is finding the money to travel and visit people and you really have to do that. It is fine to read and hear about something that is happening on the other side of the world, but you really need to see what is happening on the ground. It means so much more and you will find that these kinds of back and forth experiences are very helpful.

The Inuit in Canada were very isolated in their small communities and had very few means but once they formed an international organisation and started to share their experience, within a very few years they had a significant impact on the United

Nations and through it on world policy. They also learned a lot from each other, from the different regions where they lived. For example, one group might have done something interesting on alcohol problems while another group had some answers to housing problems. Once you start sharing, a lot of things can happen.

Policy development in Australia all too often happens in isolation and unfortunately one of those policy areas where Australia has had problems keeping up with the rest of the world is in relation to indigenous people's policy. For example, there are things happening in Australia between the mining companies and indigenous people that simply don't happen in other civilised countries. There are many such areas where international contact and awareness can make things change. You will find very quickly that if governments realise that indigenous people in Australia know about precedents from overseas and can then push for them, they become embarrassed into making policy changes.

I hope that when it comes to the open workshop discussion you will look at some practical things, such as Tony Simpson outlined. He has given us a very good framework and broad guidelines on how you can get involved internationally. I hope that you will look at practical ways of ensuring that things happen because I can tell you that the idea of a Marine Strategy for Torres Strait and the kind of integrated system you are looking for of indigenous self-government, land and sea rights, coastal and marine environment and resource management – to package all these things together is a very exciting thing to do.

There are world documents which are now saying that this is a very good thing to do – that we all should do it – but finding a place where people are really doing it is difficult. Nunavut is one place where it is starting to happen but there are few others. You are really at the beginning of something important and you will find that if the world knows about it you will find a lot of interest and where there is interest there is political support and you will get a great deal back.

13

TORRES STRAIT BASELINE STUDY

David Lawrence, Coordinator, Torres Strait Baseline Study,
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and

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David Lawrence

The Torres Strait Baseline Study was instigated in 1989 by the Commonwealth government in response to concerns from Torres Strait Islanders, scientists and commercial fishermen. These concerns were raised at a conference in Port Moresby, the Torres Strait Fisheries Seminar, in 1985. The principal concerns were over the possible effects on the Torres Strait marine environment from mining operations in the Fly River catchment area in Papua New Guinea. The Fly River estuary to the north of the Torres Strait is at the end of the Fly River which extends for 1200 km. At that time only the Ok Tedi mine was in operation. It is located on the Ok Tedi River, part of the Fly River system, about 12 km from the Indonesian border. Two other mines have more recently been opened, at Porgera and Mt Kare near the headwaters of the Strickland River, a very large river system which discharges into the Fly River. So we have an enormous river system with three major mines at the headwaters of smaller tributary rivers.

Funding for the Baseline Study is for four years. The Study commenced in 1990 and will conclude in 1993. The total government funding so far has been $850 000 and the Study is managed by Great Barrier Reef Marine Park Authority (GBRMPA) in Townsville.

The central issue of concern stems from the current practice of discharging mining tailings from ore processing, and overburden, directly into the Fly and Strickland river systems. In 1983/84 massive landslides at the Ok Ma tailings dam stopped completion of a tailings dam at Ok Tedi and the Ok Tedi mining company sought and gained permission to dump mining waste directly into the river. This agreement continued until 1986 when the sixth supplemental agreement (an agreement on environmental matters) was made. With this agreement the government and the mining company agreed on environmental guidelines to govern continued waste dumpage. The government set an acceptable particulate level and a compliance level for monitoring.

This environmental monitoring program is now undertaken by the company on behalf of the government. The Ok Tedi Mining Company continues to monitor the river and report back to the government through the PNG Department of Minerals and Petroleum. By a strange public service anomaly in PNG (Ok Tedi Mining predated the environmental legislation which covers Porgera and Mt Kare), the other mines report to the Department of Environment and Conservation. One mine reports to one government department while the two others report to another government department. The major criticism expressed has been over the lack of independent assessment of environmental impacts. Ok Tedi takes great efforts to express its openness and the impartiality of its results.

Ok Tedi and Porgera mines are currently in full production. The ore bodies are far richer than supposed and it is said that Porgera is one of the richest gold mines in the world. The prospects for continuing resource development in PNG are particularly strong.

Some idea of the magnitude of the mines can be gained from production figures. Currently about 160 000 tonnes per day are processed, 80 000 tonnes as directly discharged overburden which is stored in erodible dumps. This is one of the highest rainfall areas in the world, which means these dumps are very easily eroded. The other 80 000 tonnes are processed for ore. Much of that material is broken down into fine material and subsequently discharged into the river. Out of the 160 000 tonnes about 80% eventually ends up in the river.

The annual figures for production from one mine are 62 million tonnes per year of ore residue and overburden directly discharged. Forty-two million tonnes of that is fine material which is carried to the estuary. The heavier material settles out along the Ok Tedi and the middle Fly and the sediments carry trace metals both in dissolved and particulate form as a result of mining and natural mineralisation. In addition the Porgera mine disposes of approximately 5 million tonnes per year into the Strickland River which then enters the Fly River.

Concerns about the disposal of wastes into the river have been the subject of much international focus. Ok Tedi was criticised at a recent International Water Tribunal Meeting in Amsterdam in February 1992. The tribunal stated that waste disposal has raised the river bed and as a consequence forests and gardens have been flooded. The river ecosystem has been disturbed, boat transport affected and subsistence practices altered.

In addition to this tribunal a report by a team of German scientists from the Starnberg Institute for the Study of Global Structures, Developments and Crisis produced a report on economic and ecological development in PNG which was later published in PNG (Starnberg Institute 1991). The study was funded by the Lutheran and Catholic Churches in Germany. The Starnberg Report has gained quite considerable focus in Germany and it was hoped that it would be a document on ecological damage in PNG. Unfortunately what could have been a valuable opportunity for critical assessment of environmental impacts has turned out to be a useless report with very little scientific value.

OTML (Ok Tedi Mining Limited) admits to aggradation of the river bed. It admits to local flooding of forest bordering the Ok Tedi, to loss of garden area along the Ok Tedi, and to deposition of sediment which makes access to villages difficult.

Reduction in fish catches in the middle Fly has also been detected. There is deposition of material on the prograding front of the Fly River estuary. But in answer to many of the local people's concerns (there is a very large subsistence fishing and horticulture economy in the area), the company has paid compensation to the landowners and has formed an Ok Tedi/Fly River Development Trust. The extent of the concerns in the area is apparent from the fact that the Trust which originally related to just the Ok Tedi region now extends downstream along the Fly River to the village of Sui, just around the corner from Torres Strait.

Of particular importance to the Torres Strait is the fate of sediments and therefore trace metals beyond the Fly estuary. A study of the Fly estuary has been completed by the Australian Institute of Marine Science (AIMS) for OTML. The findings are as follows: an increase in dissolved and particulate copper levels in the estuary which is not considered to be ecologically significant; sediment entering the estuary is trapped by mud banks and mangrove islands or exported offshore; 50% of this material is stored in the prograding delta front; a further 48% is transported eastwards in a clockwise manner around the Gulf of Papua; the remaining 2% is transported in to the northern Torres Strait, particularly along the beach front west of Daru.

The conclusion is that large quantities of river sediments are not transported into the Torres Strait via the great north-east channel nor into the northern barrier reef area. However, the baseline study is still concerned with the nature of the 2% sediments. It is not known what the content of that 2% is nor the extent of the movement of that sediment from the Daru area. There are no reports on what happens to the sediment once it gets there. One of the aims of the Baseline Study is to find out the direction of sediment movements.

Geographically the Torres Strait may be divided into four main groups. An eastern group of fertile high volcanic islands surrounded by fringing reefs close to the barrier reef whose waters support rich sea life and the islands themselves support some forest. The central islands are low sandy coral cays surrounded by reefs. They support low growing scrub, grass and extensive coconut patches. The western islands are mainly granitic islands and are an extension of the Cape York/Oriomo Ridge which extends across Torres Strait from mainland Australia into PNG. The western islands are not as fertile as the eastern islands but the waters are very rich, containing the main dugong population. The north western islands are low and swampy with extensive mangrove – the water is muddy but very rich in barramundi, crabs etc. There are 16 inhabited islands in all, including Thursday Island and Horn Island.

In Torres Strait Islander communities where cultural patterns emphasise the importance of marine resources and where limited economic opportunities surround the exploitation of marine resources, protection of the marine environment assumes a high profile. In 1985 the Australian and PNG governments ratified the Torres Strait Treaty. In that Treaty, Article 13 specifically refers to protection of the marine environment. The Treaty serves to protect the marine environment but it gives no guidelines as to how to achieve this. It simply states that the two countries agree to do all possible between them to protect the environment. The Treaty also serves to protect the way of life and livelihood of the Torres Strait Islanders. An Environmental Management Committee of both Australian and PNG delegates meets annually and reports to the Joint Advisory Committee on environmental matters and this is the

means of communication between Australia and PNG over the potential impact of mining on the environment.

Concerns in the Torres Strait relate to potential trace metal contamination of commercial fisheries such as mackerel, prawn, cray, tropical rock lobster and the pearl fishery; the impact on corals of the Torres Strait and northern Great Barrier Reef; detrimental effects on endangered species of cultural importance such as dugong and green turtle; and potential human health problems from consumption of higher levels of trace metals in seafoods. This is particularly important as recent figures indicate that Torres Strait Islanders are amongst the highest consumers of seafood in the world.

The Torres Strait Baseline Study has the following objectives:

- to establish the existing levels of trace metals in sediments and selected marine organisms;
- to identify the important pathways or movements of trace metals, both physical movements and biological movements;
- to determine effects on selected marine organisms; and
- to provide the basis for an on-going monitoring program in the Torres Strait.

It is obvious that the term 'baseline' is somewhat misleading given that mining commenced in 1984 and our Study commenced in 1990. Also the Study has no direct access to the Fly River for scientific investigation. The Study may perhaps be called an environmental audit. The Study is however the first major investigation of the Torres Strait marine environment and the data set being developed will be one of the most comprehensive trace metal studies undertaken in Australia. Hopefully it will form the basis for ongoing work in the Torres Strait for the aim of the Study is to provide a basis against which future data can be compared. A once-off environmental study is not satisfactory considering the long-term nature of mining operations in PNG and future resource development prospects, and long-term monitoring of the marine environment has been recommended.

The Study comprises four parts:

1. A scientific study directed specifically to the collection of indicator species such as clams and mangrove cockles. Indicator species should be sedentary, preferably filter feeders and able to store or accumulate trace metals in organs such as kidneys.
2. A sediment collection project using grab collection methods and hand cores by divers. This study is being undertaken to determine the nature of the sediments, metal concentrations and variations in both of these along a north/south gradient. The sediment project operates in conjunction with the biota project. Use of the Ok Tedi research vessel is assisting the sediment collection program.
3. A community fisheries collection project, which collects a range of seafoods commonly eaten by Torres Strait Islanders, is being conducted by Victor McGrath. This part of the project is particularly important given that Islander consumption of seafood is one of the highest in the world. Almost 60% of that diet is turtle. The local Islander communities are informed about the progress of the study during regular visits to the islands. Local media is also used to keep the Islander communities informed.

4. The commercial fisheries collection project examines trace metal levels in prawns and crayfish. This study is also important given the importance of the Torres Strait as a commercial fisheries area. The commercial fisheries industry is also one of the largest economic activities in the Torres Strait. Islander economic activity is largely confined to cray and mackerel industries. The prawn industry is controlled and operated by non-Islanders due to the high capital investment costs and marketing methods based on southern export ports rather than the Torres Strait. A small live pearl farm industry supplying local pearl is also important in the region.

The research design is based on the assumption that if the Fly River is the potential source of pollution then theoretically a gradient of trace metals should exist extending from the north-east down through the Torres Strait with the lowest levels existing in the south, the south-west and the west. Sampling is undertaken during September/November and February/April to obtain information on pre and post monsoonal conditions, the assumption being that the monsoonal rains flush the Fly River into the Torres Strait.

The scientific study is supervised by a committee of scientists, government officials representing the Queensland, Commonwealth and PNG governments, the mining companies and the Torres Strait Islander people. A pilot study was undertaken in 1991/92 to test the research design and make preliminary collection of a wide range of marine organisms. The economics of the study were also tested. It costs approximately $150 to prepare and analyse one biota sample. It costs $370 to prepare and analyse sediment. To date, the pilot study has collected over 2600 biota samples and 220 sediment samples – the cost of analysis is far greater than the budget.

The collection of samples for the pilot study has been completed and an interim report has been presented. The main collection commences today (1 October 1992) and will finish on 14 November 1992. We hope to match the number of samples through the collection period, although the range of animals being collected is considerably narrower and we are now concentrating very much on the northern section of the Torres Strait. The final collection period will be from February/April 1993. It is expected that over 8000 samples will be collected from both studies. The results of the pilot project will be reported to the government and the Torres Strait Islanders in December 1992 and made available by June 1993. The main report on the whole of the study will be completed by December 1993.

The question of ongoing monitoring needs to be addressed – ongoing monitoring is essential if the long-term impacts of mining are to be assessed. The baseline study can only give the starting data – it can only give the base figures – it cannot predict the future changes or the future impact of mining on the river. Monitoring has to be a progressive statement carried out over the life of the mines – the mines will be open until the year 2018. Only close monitoring of the situation by Torres Strait Islanders and by scientists and by continual communication with the mining companies in PNG over environmental concerns can ensure any measure of protection in the Torres Strait.

Reference

Starnberg Institute (for the Study of Global Structures, Developments and Crises), 1991. *Economic–Ecological Development in Papua New Guinea: Development and the Environment*, Melanesian Institute for Pastoral and Socio-Economic Service, Goroka, PNG.

Victor McGrath

I would firstly like to clarify my role in the Baseline Study. Prior to joining the Great Barrier Reef Marine Park Authority for this work, I had been involved in an economic development study with the Institute of Aboriginal Studies. This work was for the ICC who then saw fit that I become involved in the Baseline Study so that they could keep a closer look on what was happening. This sort of mistrust has been naturally evolving from a whole lot of work that has been carried out in the region by a range of people who just come and go – come and go with lots of information. They go away and we in the Torres Strait really don't see much for their work. The people who benefit most from that work are probably the researchers themselves.

Most of the work I have done and am still involved in with the ICC has been on environmental or cultural issues. I have good communication skills with local people, having worked in the field for the past 12 years and my part in the study is the community collection program.

In this talk I would like to concentrate on the things that the Baseline Study doesn't do in the Torres Strait. The Torres Strait looks like a huge place when they show it up on these maps but you need to keep in mind that the maps are very much exploded. We may be a very small part of the world up there but we face all sorts of problems and are covered by all sorts of laws – Aboriginal and Islander laws, national laws and international laws.

The sea lanes in the Torres Strait are deemed to be international waters by the International Maritime Organisation of which Australia is a member. The people concerned with that say that the Torres Strait people have no control over who goes through those waters. The reasoning or rationale for declaring these waters as international waters is partly for defence purposes. That is all very well but in the meantime it is viewed locally as people walking through your backyard. The seas are just the same to us as the land. It is very difficult to operate under those circumstances. This is an issue in itself, the fact that we have to put up with non-compulsory pilotage as compared with the inner barrier reef where they do have compulsory pilotage. And this is just one of many issues.

Another issue is the fact that the Torres Strait is Australia's only international border. We Islanders don't have much control over what happens between Australia and our neighbour PNG. Bearing in mind that they have economic difficulties up there, as has everyone else, we are the ones facing the brunt of a lot of what is going on. The Baseline Study is trying to clarify just one of the problem situations going on. It is concentrating on metals as a result of mining, on the increased sediment loads, etc. As David said, there are now studies such as that carried out by the Australian Institute of Marine Science (AIMS) whose figures suggest that only 2% of the output from the Fly estuary area seems to come in to the Torres Strait. It may look like we are dealing with just a tiny bit of water, but as a representative here from Darnley Island can tell you when he sits on the beach or in his house during the wet season he can see all sorts of stuff floating by there. The Chairman of Walter's community, Mr George Mye, says 'it is not so much what you see that really concerns us but more what we don't see'. Hence this need to pull scientists in.

Having spent most of my background in the public service working with bureaucracy, working with scientists and with their jargon is a whole new experience. So one of

my roles in the Study has been to communicate the information back to the communities – but what can you substitute for words like 'trace metals'? How can you describe these things? It's a difficult job and I walk a very fine line when working in an area where there are many other health problems, including very high diabetes levels. I try not to get people too worried or too concerned about seafoods because there is then the problem of people turning from the natural diet that they have had all their lives from the sea to processed food in the stores and that is not going to help them, especially because of their diabetes problems. My information to them has to be very accurate. I cannot go making crazy statements or comments.

We have now completed the pilot project of the Baseline Study. That began in 1990 and finished with our last collection at the end of the last monsoonal wet season. Those results are not in yet. The *Western Venturer*, the Ok Tedi research vessel, leaves for the beginning of the main part of the Study tomorrow. As David said we expect the first report by December 1992 and the final report including recommendations about what the future holds by late 1993.

My particular job involves discussions with people about what could be potential problems and just making people aware of what is going on. I collect seafoods that people consume in those communities. There is a whole procedure of protocols that I follow, as laid down by scientists, a system of collection using acid washed bags and sterile conditions. The samples then are sent down south and processed.

The major problem I find working on the project, and I am speaking personally now, is basically answering what people want to know. The Baseline Study will answer most of these questions. But the big question is what do all these trace metals mean to people's health in the region. Personally I can't see at this stage too many answers coming from the study in this regard. I think we have now reached a point where we need to start talking to people in the health field. This doesn't come within the objectives of the Study, as outlined by David, and so it is not an answer that the Baseline Study is going to provide. We have got scientists who have provided data that is accurate, as far as I'm concerned, and I have been working closely with these people. But this is a whole new ball game. We have all these results but they are only figures and numbers to people and they don't mean a thing until the data is interpreted. The big problem we face now, from the Torres Strait Islander point of view, is what does all this mean to people?

David is an anthropologist – not a scientist. This is because at the beginning of the study it was recognised that this work was initiated in response to concerns by Torres Strait Islanders, especially in 1985 at that meeting in Port Moresby. It was pointed out at that time there was a need to maintain a people-focus to the Study. It is too easy for a bunch of scientists to get involved and go off on a tangent and come back with something they may have seen as interesting in their specialty fields. But the reality is that we need to keep these types of studies on track and keep the people-focus to it and stick to the objectives which were designed to answer the questions raised by the people at the beginning.

Discussion

In the lively discussion which followed it was clear that there was a widespread perception amongst the audience that the results of the Baseline Study would indicate significant marine pollution in Torres Strait, as a result of mine discharge into the Fly River system. No such result was, however, implied by the two speakers from the Baseline Study.

Getano Lui: The main reason for this Baseline Study is the inaction taken by the PNG government. The Ok Tedi mine, for instance, doesn't have the proper equipment to make the tailings safer. They are dumping the waste into the river. From the top down the vegetation is all dead. It was when I first saw this that I realised there wasn't enough being done by the Papua New Guinea government. We made representation to them and I've been to Port Moresby to talk with them. They told me that, because of their economic climate and the closure of Bougainville and the fact that the Ok Tedi mine is contributing 40% of the national growth of their economy, closure of the mine is totally out of the question – that would be the best solution that we could come up with.

What upsets me most about all this is that there are Australian companies operating over there, BHP and CRA, who are not adhering to the standards they would keep if they were working in Australia. Because they are over there they are getting away with it and this is another hurdle that we have to cross. The reason we need this Baseline Study is because the Australian government is not putting enough pressure on PNG to protect the environment in accordance with the Treaty.

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(Getano Lui, 2 October 1992)

The Baseline Study is our best approach but funds are running out and it seems unlikely that more funds will be made available this financial year to carry on the monitoring. I have told the Australian government that there has to be an ongoing commitment by government to continue the monitoring because there are many more years left in the life of the mines. What I'm asking is when everyone packs up and leaves what happens then? None of them are going to worry about the environment which is why it is important that we have something in place – some sort of strategy –

so that we will be able to do something about it. We asked for the Baseline Study for the simple reason that PNG won't listen to us – they said that they sympathised with us and know that there is a race of people living in Torres Strait but naturally money comes first for them and that is how it is.

Dermot Smyth: Did the specific objectives of the Baseline Study come directly from the people? Was there a very specific relationship between what the Islanders wanted and what the study is doing?

David Lawrence: The Torres Strait Islanders made a number of representations to the government about their concerns which mainly related to concerns about the fate of the Torres Strait marine environment. The government then contracted an independent marine research company to write a profile for a baseline study. This took place in 1987. By the time the funding was granted and the Great Barrier Reef Marine Park Authority was handed the management of the Study, things had changed considerably. For example, the other mines had now opened up and so the report which formed the basis for the study had to be rewritten. The objectives of the study, as outlined in my talk, were those that were rewritten in 1990 based on the concerns of the past 5 years. There are also other concerns in the area, such as the fact that PNG now has a major oil refinery, located at Cape Blackwood, and so the Torres Strait is now a major transhipment passage for oil.

Monica Mulrennan: Victor mentioned the health implications of the Baseline Study. What organisations would be involved in this aspect of the work and will the final report of the Baseline Study make recommendations and set guidelines in place regarding the implications of the findings?

Victor McGrath: The Baseline Study will submit a number of recommendations to the government and will certainly include a recommendation that aspects of Torres Strait Islander health should be looked at. We have already had discussions with the National Food Authority and the National Health and Medical Research Council; these are the sorts of bodies that would be asked to take on that profile.

Charlie Missi: Australia is doing nothing about the products coming from the Fly River. Australia says it is PNG's problem but it is Australian mining companies that are working in PNG. It is the same situation as in Bougainville, but Australia doesn't care what happens to the Torres Strait either.

Tony Simpson: How much profit are the mines actually making?

David Lawrence: Technically it seems that OTML does not actually make a profit at all. Although Ok Tedi has made lots of money, much of the profit seems to be written off as capital expenditure, taxation relief, employment, etc. The situation is complex because Ok Tedi is one-third owned by BHP, one-third by the Papua New Guinea government, so that technically the people of PNG own one-third, and a consortium of German and American companies makes up the rest together with some minority shareholders. Porgera is a very viable mine.

Matthew Jamieson: With Kubutu Oil Refinery and so much oil traffic through the Strait, with plans for a possible pulp mill in Irian Jaya, BHP drilling oil in west Papua and the Timor Gap, and the possibility of an oil refinery here in Darwin, there is going to be even greater potential for pollution to the marine environment. I would like to suggest that people here think about more than the Torres Strait as one discrete region but the whole shared ocean needs to be thought of as a discrete region too. Ok

Tedi's pollution is going to move further than just the Torres Strait. We need to work towards a larger agenda otherwise all these issues will get out of control. Whether there is dumping off Borroloola, in the southern Gulf of Carpentaria, or off the Freeport Mine in Irian Jaya, it is all coming into the seas that we use.

Frederik Harhoff: Do we know of any means to diminish the pollution from this mine in the Fly River? Are there means available to reduce the waste from the ore that is being dumped into the river? Could it be disposed elsewhere or could it be cleaned? Is there anything which we can propose to PNG?

David Lawrence: Mining technology is now very sophisticated. It is not simply a matter of digging something up and shovelling it in. The best way to achieve what you ask is to build a tailings dam. This is an internationally acceptable standard for waste disposal in a mine. The problem in PNG is that the Ok Ma dam collapsed in 1983, which meant that the mining company was then able to go to the government and say the dam collapsed because the land is seismically unstable and it is in a high rainfall area. It is difficult country to work in and therefore a dam cannot be built.

The other means at their disposal was to simply dump the waste into the river and the government accepted that in principle. That doesn't mean that as mining engineers they didn't acknowledge that the tailings dam is the best approach to take; but unfortunately what has happened is that there has been a progressive effect. The next mine has come along and asked 'Why do we need a tailings dam – we live in the same mountainous belt, the same seismic area with the same rainfall' – and so the next mine is permitted to dump waste straight into the river.

Fred Harhoff: But at some stage it has got to stop. At some point someone is going to have to show that there are alternatives, otherwise we will get nowhere.

There are a number of examples where development aid has been reduced or withdrawn from countries which are violating human rights. I think that this could be an obvious case to pursue if it is really as bad as what we have been shown here. I think the Australian government does have a case for saying that if PNG doesn't do something about it and introduce some alternative solutions to improve the situation then they might eventually face reduction of the development aid that is being given to them.

I would also like to add to the earlier reference made to the International Law of the Sea Convention, which was adopted in 1982 and will come into force probably in 1993. It takes 60 countries for it to come into force and by this stage I think there are 56 countries that have already ratified it, so it will enter into force very soon. Part 10 of the International Law of the Sea Convention contains a number of provisions to preserve the marine environment. The Treaty does put rather tough constraints on the pollution that countries allow in the marine environment, including estuaries and rivers. I believe that the provisions of the Convention provide a good basis for putting further pressure on the government of that country to intervene and reduce the amount of pollution. There is also a protocol (No 4) that specifically provides for cases where indigenous peoples are dependent on local fisheries and should be given a say in the matter. When the Convention enters into force there might be something to look at which might have application to Torres Strait.

David Allen: There are some basic things that people need to know when formulating a strategy so that they can make use of international conventions and treaties. The

international convention in relation to the sea will bind each state that signs it in a relationship to the other states that sign it. Each state will owe an obligation to other states to abide by the terms and look after their actions. This doesn't mean that individuals inside a particular state will have any rights under the convention and the same thing is true in relation to the Torres Strait Treaty. While it refers to Torres Strait interests, it doesn't give any immediate rights to Torres Strait people.

At first sight that looks like a very great problem and it is a very great problem. But it does seem to me that if you have in the Torres Strait Treaty a promise, albeit a promise between the Australian government and PNG government, to protect the livelihood and resources of the indigenous peoples of the area, that seems to be very much akin to the Maori case in the Waitangi Treaty. If you look not at the terms of that Treaty but at the principles, there is a special trust relationship – a fiduciary relationship which is owed by the state to the Maori people. I suggest you could use that in the Torres Strait to say that under the *Mabo* principles the Australian government has a fiduciary relationship – a special trust – to look after the resources of the Torres Strait and the livelihoods of Torres Strait Islanders. The best thing about this fiduciary relationship is that if it is breached, compensation must be paid. Given that the real politic of the Torres Strait is dictated by money, if there is a potential to go to the Commonwealth government and say that whatever is permitted to happen in the Torres Strait over which the Commonwealth has the power to control and which damages Islander interests, the Commonwealth will be liable in damages to compensate the people for their loss.

It seems to me also that the Australian government has no direct power to do anything about the mine at Ok Tedi and has no control over the actions of BHP. From both a legal perspective and certainly a political one, it would be dynamite for them to dictate standards to the mining company. Also it is not simply an issue between the Australian government and the mining company, a German/American consortium has a one-third share as does the PNG government. The way to apply pressure would be for the Australian government to make a connection between the mining operation and overseas aid to PNG and use this as one sort of leverage. I don't believe, however, that there is any political will to do this unless you can run that fiduciary argument to give them the incentive to do that.

The other means of direct action is to approach the owners of these companies, the shareholders that exist in Australia, Germany, and America. Following on from what Terry Fenge said earlier, there would be a need to develop a program of action, including the findings from the Baseline Study but also information to depict to the world what the Torres Strait is about in terms of the interests of the Torres Strait Islander people; their sense of responsibility in terms of caring for their country; and the responsibilities that the directors of mining companies have in terms of caring for that same environment. By selling all this, through videos and other commercial means, it should be possible to get to the people that these mining companies are ultimately accountable to.

Frederik Harhoff: It is important that you realise that there are difficulties in most cases of what we have to defend. But this is a wonderful case and when you really have such a golden case then you must use it. You will have all the world's sympathy on your side. You will have nothing to criticise you about this case, so you must go far with it. If you told someone completely unfamiliar with this case about what is

going on, people would say this is not possible; but it is possible and it is taking place here. And so my advice is that once you have a really good case then go for it. If you cannot use the International Convention of the Sea when it comes into force, then you can at least use Customary International Law which provides for the basic polluter pays principle.

Either the mining companies do something immediately about the situation or they may face the risk of having to clean up the whole business afterwards. If leading industrial countries, such as Germany and the US, have sharehold interests in that mine, they must provide for science and technology to develop measures to reduce the pollution. It must be possible. It will be costly but it will be even more costly if they have to clean up the whole area later.

Tony Simpson: I agree with David Allen that this approach would be entirely dependent on the political good will of Australia but there are measures that could be taken under International Customary Law, such as trial smelter provisions. That is basically the good neighbour principle. If you damage your neighbours then you can be held responsible in broad terms. We are getting to the stage where it is becoming obvious that this type of situation is happening. It would require a decision on the part of the Australian government to call on that principle and to develop a strategy for putting pressure on the companies, their shareholders' activities, and through exposing the fact that this is a breach of international law it would even be beyond Australia's power at that stage . This could be used then to make a very strong political campaign.

Frederik Harhoff: I don't think the Australian government could stand against the international pressure that would come from this issue. The Islanders should hire good lawyers and make it known to the world that the Australian government is not prepared to do anything about the worst case of pollution in recent history.

Tony Simpson: One of the things that we unfortunately have to deal with is the very complex dynamic between Australia, PNG and Indonesia which plays on the strategic analysis of Australia threatening to act in a bullying neo-colonialist way by affecting its aid to PNG. This is a significant part of the dynamic in any of the political analysis which complicates this issue.

Warren Murgatroyd: Given that PNG is the largest recipient of Australian aid, it would seem likely that Australia would rather help PNG become self sufficient rather than continue to hand out payments. The only way PNG can become self sufficient is through mineral exploitation and so we have a double-edged sword for Australia, which wants to get rid of the economic burden. The easiest way for them to do this is by letting them dig up however much they can.

What is particularly interesting about all this is that in Torres Strait we have a group of indigenous people who are depending upon a non-indigenous Australian government to negotiate with another indigenous government in PNG. To me this is the crux of this issue – can the two indigenous groups sit down and work this out without non-indigenous involvement?

Getano Lui: I am pleased you asked that because when we go across for our Treaty Liaison Committee meetings there is still ill feeling from PNG about the treatment they got from Australia. Usually information flows easily between us when we get together but as yet it doesn't amount to anything because the Australians are saying

that we have to deal with them on that level. But I take your point because we can talk to them much easier and they can understand what we want, yet because of the relationship between the two countries we find it very difficult to get through to our side.

Monica Mulrennan: We have been talking about the potential for utilising international conventions to pressure the mining companies and the PNG government into cleaning up their act. To what extent will the results of the Baseline Study impact on the strength of the legal case given that the preliminary findings already suggest that only about 2% of the material coming down the Fly River eventually ends up in the Torres Strait?

David Allen: I think it is absolutely elementary that they must. You have to show damage before you can bring any course of action. The good thing about the Baseline Study, even though it is more an interim audit than a baseline study, is that it gives you a reference point in time with which it should be possible to demonstrate with some degree of objectivity that people are not just complaining with a sense that something has changed, but there will be scientific evidence to support the claim. Basically the Baseline Study will be fundamental to any kind of action that will be taken either in a legal court or in the court of public opinion.

Horace Nona: Moving away from the pollution issue to the east, I would like to ask the three lawyers here what do we do about the problems in the west with the gill nets and the long nets? And now with the possibility of a pulp mill in Indonesia, is there any way that we could prevent that which will also take away resources from us?

David Allen: This really goes to the centre of what I was saying earlier, that is the nature of your interest in the waters that are being fished by gill-netters, fished by long-liners, and whatever else. The Australian government has the power to control these things and to make whatever protective legislation and management systems are needed to look after the home fishing grounds of native groups. There is no question of that. But the question is – what will provoke them to do it, what will compel them to do it? When you look at the advances made overseas and at the history of legislation in Australia, the only way of getting that kind of protection is by establishing that you have a right and an enforceable property interest in those issues which the Australian government cannot ignore.

Horace Nona: We have had 50 tonne long-lines set on a coral cay now and no one is doing anything about it. It is on an important pearling base.

David Allen: This is a classic example – if this is a reef which according to tradition is within the boundary of an indigenous estate, then the *Mabo* style action is the way to pursue this issue and give you control over what happens on that reef. You will always be subject to some kind of legislation, but the position you would have as a person with property in that region would be beyond comparison with your present position.

Another practical outcome, and this is what this workshop is all about, is that the interpretation of the fiduciary obligation as in the Maori case is that it imposes not just a passive restriction on the government not to incur damage on the people, but it bestows a positive obligation on them to take steps to protect people's interests and that is something that the government is under right now and if found to be in breach of that obligation would have to compensate for damages incurred.

The reality is that law is ultimately a subset of politics, and the politics of this are to build credible arguments so you can speak immediately with government with a clear agenda of what you want, and with a clear indication to the government that if they don't act fairly and give some ground, they may be in a position where they will have to pay for it later.

Getano Lui: A further example of the confusion over jurisdiction and control in the Strait is the Indonesian vessel containing PNG oil which is wrecked in the Torres Strait. No one seems to know who should sort that out.

Charlie Missi: On the issue of pollution, as crayfish migrate towards the Fly River to spawn, what effect has pollution on the life cycle of the crayfish? What studies are being done on the life cycles of the crayfish or turtles? The Torres Strait is like a washing machine and the water circulates but doesn't go anywhere and this leads to a build up of pollutants.

Victor McGrath: This is a very good point. As we mentioned, 98% of the discharge from the Fly River is going in a eastward direction and we are mainly concerned with the remaining 2%. But even if we are only dealing with 2% of the Fly River discharge, this may be very significant in the Strait because crayfish spawn there.

Some of the preliminary data from the commercial fishing program of the Study are, however, showing discouraging signs in terms of their potential to shut down the mines. Only a small area is being looked at and over a very short period of time. Nevertheless, levels of copper are often very low and it is difficult to know what we will get out of the Baseline Study at the end of the day. We are not interested in closing the mine for the sake of closing it. We are not that radical, but we are interested in how these mines affect us and in doing something about the problems once they have been identified. Many scientists are saying that very little of the sediment is going into Torres Strait; some suggest that it turns into a liquid sludge and stays in the river; but even if this is true, we need to know what could happen in the longer term. Long-term monitoring is, therefore, important and one of my greatest fears is that if the readings show there is no major problem now, what will be the reality further down the track?

I would also like to say that some of the points made here this afternoon are fairly ill founded. We don't have enough time to go through everything and so we are just glossing over it here. Some of the suggestions made from the legal people here are very simplistic and we have heard them before. While we appreciate their efforts, the problems here are not that easy to resolve. We have heard all this before and obviously have followed up such suggestions in the past but we do not have the ability to pluck lawyers out of Australia when we are out in the sticks. But some of the ideas that have come up this afternoon were good and it is a shame we don't have enough time to get into them in more detail during these discussions.

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THE RESOURCE ASSESSMENT COMMISSION'S COASTAL ZONE INQUIRY

Dermot Smyth, Consultant

I would like to present a short talk about what is perhaps another mechanism for preparing for the sorts of changes we have all been hearing about and talking about over the past couple of days – something that will perhaps help to educate governments to respond to the sorts of things that people, specifically Aboriginal and Torres Strait Islander people, are asking for in relation to control over coastal land and sea estates. I am talking about a Commonwealth government inquiry into the future management of the coastal land and coastal sea all around Australia. It is called the Coastal Zone Inquiry and is run by an organisation called the Resource Assessment Commission.

The Resource Assessment Commission was established in Canberra in 1987 and its role is to give advice to the Prime Minister and also to the State Premiers about the solving of resource management problems around Australia – such as where there is a conflict between development and conservation, or between mining interests and Aboriginal interests – any such conflicts in the area of resource decision making are part of our brief. The Resource Assessment Commission can be asked to conduct an inquiry into finding possible solutions to the problem. You may recall that in 1991 the Resource Assessment Commission concluded its inquiry into the issue of mining Coronation Hill. In that particular case it was a direct conflict between Aboriginal interests and mining interests and the Commission came down on the side of saying that Aboriginal interests should be recognised.

The current inquiry is into the future management of the whole coastline. Part of the brief for the inquiry is to consult with people who are living on the coast and find out what ideas they might have about how coastal areas might be managed better. It is not an inquiry to solve particular problems – it is trying to find better ways by which governments can work with each other and with local people or ways in which governments can get out of the way and allow local people to manage areas. It is a strategic look at how the coast should be managed.

The inquiry is focusing on three main areas: the first is the effect of tourism and tourism development along the coast; the second is concerned with mariculture and fish farming; and the third deals with the effect of building or other infrastructural developments along the coast. It was primarily tourism and building issues which provided the stimulus for the inquiry. As many of you would know, the development of part of the coast in southern Australia has been so rapid that considerable destruction has taken place. We decided that we should look at the coastline all around Australia before we destroy the whole place.

In recognition of the special relationship between the coast, the sea, and Aboriginal and Torres Strait Islanders and the coast, the Commission is also making some effort to get the views of Australia's indigenous people, include them in the inquiry and make sure that the recommendations which go to the chief minister and the premiers will reflect the concerns and needs of indigenous people.

What I want to talk about here is how Aboriginal and Torres Strait Islander people can get involved in the inquiry; what the possible benefits might be; and what the outcomes of the inquiry will be. We distributed a brochure about the coastal inquiry, which some of you will have seen, to about 500 coastal communities and organisations, including the Torres Strait Islands. This gives a little bit of information about the inquiry and gives advice about how Aboriginal and Torres Strait Islander people can participate.

There are several ways of having input: there is a phone number which people can ring up and ask for more information about the inquiry; or you can have someone come and listen to your concerns; or you send a written submission or a video or audio tape to the inquiry to say these are our concerns. The other way to get involved is to attend public hearings – there are four commissioners, appointed by the Prime Minister, who are travelling around the country holding public and private meetings. They will be in Broome and One Arm Point tomorrow, in Darwin on Sunday and Monday before travelling to Maningrida on Tuesday. While in the Top End they will be meeting with representatives from coastal communities all around the Territory. So some effort is being made to try to listen to people first hand. The Commission has also expressed some interest in travelling to the Torres Strait so that people might have an opportunity to talk to them there.

Another way of having a say is to talk to me as I have been asked to write a report for the commissioners on Aboriginal and Islander interests in the coastal zone. That report will be released as a draft at the end of this month. Anyone who has expressed an interest in these issues will receive a copy and I invite comments and criticism to make sure that the story is accurate.

Some of the issues that have arisen during my recent consultations will give you an idea of the scope of the inquiry. Although the main focus is on the three areas I outlined, we are interested in hearing details of any concerns that relate to the coast and sea. This is not a land rights or sea rights inquiry, but if those issues of traditional rights to sea and rights to fishing or concerns about mining are concerns of indigenous people then they are certainly concerns of the inquiry and will certainly be included in my report and the commissioners will be forced to address them if they get hard evidence.

The sorts of issues that people have raised so far are things like the fundamental cultural and historical relationship between land and sea that indigenous people have and as a result of that fundamental relationship lots of other things flow. For example there are conflicts between commercial and traditional fisheries; protection of cultural sites on land and sea – in many parts of Australia protection of such sites is a government responsibility and not within the hands of indigenous people; issues of hunting and fishing rights; problems with permits; and the impact of tourism is a big issue everywhere and most indigenous groups are saying they would either like tourists kept away or would like more control over the development of tourism. Other issues include national park management on the coast and marine park management.

There are also issues related to infrastructure changes. The rate of structural change on Aboriginal and Islander communities in relation to building and establishing power stations raises environmental impact concerns. There is also a whole range of issues dealing with sea farming and most of the commissioners had underestimated the significance of mariculture or sea farming for indigenous people. A number of incidents have been reported to me such as prawn farming within mangroves where people have traditionally collected food. So there are often direct conflicts in the establishment of a commercial enterprise and the maintenance of resources tied to subsistence practices. There is also the important issue of the pearl farming industry in Torres Strait and Western Australia where pearl farms have been established on indigenous sea country very often without any involvement of local people either in royalties or in Aboriginal training and employment. A number of people have also expressed concerns about the Coastwatch surveillance flights under government control with insufficient feedback to the local inhabitants about the operations.

The inquiry provides an opportunity to prepare the government for the changes that are coming. We have heard a lot here about successful mechanisms in Canada and elsewhere and one of the keys seems to be the government acknowledging that they are serious issues and so claims for greater control and access don't come out like a bolt from the blue. This Commission has come at a time when the *Mabo* case has alerted everybody to the fact that indigenous people actually own this country and it is an opportunity to have indigenous issues put high on the agenda.

There will be a draft report from the commissioners in December of this year. That will be a publicly available document for comment and then there will be more public hearings next year for people to give feedback on that report and the final report will be available in November of next year.

As far as the benefits of this inquiry to indigenous people are concerned, all government inquiries depend on action afterwards and I'm not going to stand here and say that the recommendations that people communicate to me and that I then communicate to the commissioners will be acted upon. But I can say that it is a public process and the reports that get published, such as my report on Aboriginal and Islander interests in the coastal zone, will become public documents which can then be used as a lobbying tool. Obviously the greater the input that indigenous people have at each stage of the process the greater chance of successful outcome for them from the inquiry.

Discussion

Steve Mam: I am a Torres Strait Islander and the thing I find with these inquiries and reports, whether they be federal or state, is that what is the point of people like you doing this work apart from getting people's views. What do we get from them? We have been frustrated by them. We are a human species of the world and should be treated as such.

Those feedbacks you talk of are not getting back to us. We want some say about us – not you people talking about us – there is no real feedback or only some sloppy sort of feedback – or no feedback at all – and the dirty dishes are still there. I am very keen to express this, whether it is to the Prime Minister or the Premier of the State – there is no feedback getting to our people.

Dermot Smyth: I will certainly make sure that there will be feedback from this.

Joseph Elu: It is impossible to find a compromise between all user groups. As soon as you say let us look at fish and ask Torres Strait Islanders about commercial fishing – it won't match because the greater the effort of the commercial fishermen, the lesser the product of the subsistence users. So you can't go around saying that tourism, commercial fishing and us, the sustenance users, can survive together in the one waters.

Another thing is that Fish Management Authority is trying to stop us getting trochus from the reefs. They reckon we are putting pressure on the reefs but then in one day there are a million people walking on those reefs from the tourism industry. Because it is an outside industry the government is not going to stop it. The long-term impact of tourism needs to be considered including questions about the effect of suntan lotion and other wastes that end up in the water – these are the things that are left behind for us to deal with when the tourists are gone.

Dermot Smyth: This is a very relevant case not only in the Torres Strait but in the Kimberley region where we have fishermen coming over and intervening with trochus fishing. These are very real issues. When I said that our terms of reference were tourism, sea farming and mariculture, and building and infrastructure development, I did not mean that we would hope to find a single solution which will enable all of those things to coexist harmoniously. We are trying to get information about the issues and conflicts so that we can prepare the government for the sorts of things we are thinking about in this room, such as the strategic idea of self-government for Torres Strait where Torres Strait Islanders actually control commercial fishing, control tourism or exclude tourism from certain areas.

The inquiry will hopefully prepare government for the types of decisions people are working towards, involving the types of issues which will come in submission to this inquiry. For example, just as you are saying, all of these things cannot coexist therefore in some places subsistence will be given priority with other things following behind. These are important issues for the commissioners to understand. All I'm saying is that this inquiry might be a way of building up that understanding and provide a way of educating Canberra people about these matters.

On the international issues, I think it is very important to get the message to Canberra that the Torres Strait is not an island group isolated from the rest of the world but is almost contiguous to Papua New Guinea. It is very hard for people sitting in Canberra to understand that and I think it would be useful for these commissioners to come and sit down on Saibai Island to see that Papua New Guinea is just across the water from there and that the pollution issues from Ok Tedi are real and immediate issues that people talk about every day and not some sort of abstract academic exercise. We are aware of the international networks but the stronger the message comes in from people like yourselves, either verbally or in writing, the greater our chance of achieving something substantial in the final report.

Alan Reed: What is the extent of the inquiry's interest in relation to the 200 mile zone?

Dermot Smyth: The coastal zone is defined for the purpose of this inquiry as being as far out to sea and as far inland as the commissioners determine is necessary. It is pretty vague but if you think there is an issue of concern right out to the 200 mile

limit that might affect for example indigenous people's lifestyles or economy then that is relevant. If, however, it is an economics issue 200 miles from the coast then it might not be relevant to the inquiry.

The focus of the inquiry is limited to the coastal zone which will generally be 5–10 km from the coast. In places such as the region around the Torres Strait it has to involve the whole area because it must all be considered coastal. In east coast Queensland the inquiry is certainly interested in all that area up to the outer reefs which in some cases is 80–100 miles from the coast. I am not sure if it is concerned about what happens up to the 200 mile limit. But if you have a concern about the 200 mile limit then by all means communicate that concern to me or to the commissioners. Once it has been communicated it has to be considered, as do all submissions made.

Alan Reed: Is the Torres Strait of particular importance because it is within the 200 mile limit?

Dermot Smyth: The Torres Strait is important for many reasons – international reasons, commercial development in Queensland reasons, self-government reasons. Indeed in many ways the Torres Strait is a microcosm of all the coastal issues in Australia.

Tony Simpson: Could you give us an indication of what issues were initially considered most relevant to the inquiry and do you believe the inquiry is sufficiently flexible to allow the issues to evolve?

Dermot Smyth: I think the inquiry is certainly evolving. The four commissioners all come from different backgrounds: there is a lawyer, there are two economists and there is an environmental consultant who used to be Minister for the Environment in Tasmania. All of these people are learning as they go along and my impression is that when they first took on this inquiry several months ago they thought that many of the central issues were clear cut and that they could ignore quite a lot of other issues.

I think it is also true to say that indigenous people's issues were very low down on the agenda when it started and if you look at a brochure which was distributed to the Australian community at large in the early days you will find that indigenous issues are not mentioned at all. So it has been an educational process for the commissioners and the *Mabo* case has certainly raised that awareness. It is a learning process that is still going on. The visit of the commissioners to Broome, to One Arm Point, to Maningrida and, I hope, the Torres Strait will hopefully help that evolution.

Getano Lui: There is a $20 million prawning industry in the Torres Strait. We have tried to limit the number of trawlers into the region by putting in a non-transferability clause as part of the licence. However, the Attorney-General has ruled that this was illegal and so the present situation is that the Torres Strait is now wide open. Trawlers are ravaging the bottom of the sea fishing for prawns with serious repercussions for local fishing. What would the inquiry propose to assist in solving this type of problem?

Dermot Smyth: The commissioners would probably say that this is not a fishing inquiry; however, if a fishing issue is raised that impacts on the coastal environment, on people's lifestyle and economy, or on other people's traditional rights then they must include it within their brief.

It seems from what you are saying that there is a real management conflict between commercial fishing and local fishing and looking after the marine environment. If that is the case then this must become an issue for the inquiry and the recommendations that they bring down will have to be consistent with the social well-being of people living in the Strait and the health of the marine environment. The commissioners would be obliged at least to provide options. It is, therefore, important that they receive information from you about such matters. They could then go to the Prime Minister and say that if the situation is allowed to continue as it is then the following will happen: subsistence fishing will decline and ultimately the commercial fisheries will probably decline. By raising such issues you will also be raising the whole issue of increasing Islander control. I think that the inquiry will assist in the preparation of that ground also.

The inquiry is not trying to solve individual problems. It is looking at better ways of decision making. The commissioners will come up with options for federal government and state government to assist them to interact more effectively with each other or for increased self-management at a local level. To that end the self-government issue would have to be addressed if it is submitted as an issue. The inquiry is looking at administrative solutions but also at some economic instruments to give incentive for improved management.

Glynis Sibosado: I work with regional planning and am involved in direct consultation with communities. The biggest problem I have to deal with is coordination: trying to get people together to talk to the commissioners when they visit; trying to streamline and focus community thought in Aboriginal terms of reference.

When commissioners or various officials just arrive and try to talk directly to the people and don't tell us what they are doing they get fragmented replies because the people they end up talking to are confused and don't know what they are really asking or what the real issue is. Commissioners need to coordinate with the organisational people like us to get better results.

We have much the same problem with ATSIC regional plans. Some plans deal with land issues and some just with funding. Their criteria vary from region to region because they are not effectively coordinated.

Dermot Smyth: This is a very important point particularly in relation to the question of what these ATSIC regional plans are coming up with. For example, in the Cape York region land management issues are being addressed seriously while in other parts of the country land councils seem to be concerned only with funding and social development while other organisations are left to deal with land matters. There is a need for clarification of such issues, especially for the people on the ground, but also to assist in the establishment of more effective administration.

Terry Fenge: In commissions or inquiries such as this, it is normal for organised interests to come forward with a litany of complaints about conflict and jurisdiction and then for commissioners to consider these complaints and make recommendations as to how to come to grips with conflict. If the Torres Strait Islanders, however, did something entirely different; if, for example they drafted a comprehensive marine strategy that would deal not only with the substance of conflict but also with jurisdiction control, management, and future institutional arrangements, would it be

within the terms of reference of the commission to evaluate such a strategy and perhaps recommend endorsement of such a strategy?

Dermot Smyth: The commission would probably not want to endorse a particular strategy. They would perhaps look at and provide recommendations to government to say this is a good approach to take in relation to increasing local control.

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BACKGROUND TO TORRES STRAIT REGIONAL GOVERNMENT

Getano Lui Jnr, Chairman,
Island Co-ordinating Council, Torres Strait

The Island Coordinating Council (ICC) is constituted under the Queensland State Act. It is unusual in having two different Acts of Parliament: the *Community Services Aboriginal Act* and the *Community Services Torres Strait Islander Act.* At the local government level there are 19 community councils. Council chairmen automatically become members of the ICC and out of that we elect a chairman, deputy chairman, etc.

The ICC started off as an advisory body but, with pressure, the government amended the Acts to give the ICC an increased statutory and administrative role. As a result we now have some control over the policies affecting our people but not to the extent we would like. We have been given increasing responsibility but without the resources necessary to carry out those responsibilities.

One big problem at the moment is with the Torres Strait Treaty – as David Allan says it is essentially an empty document. When it was first implemented we all thought it was there to protect our rights but it now seems that it is there to protect everyone else except us – the Torres Strait Islanders themselves. This problem has built up over the years in frustrations. The Torres Strait is unique and isolated. Very little notice is taken of us by governments because we are so distant from Canberra and Brisbane.

It was our 1988 call to secede from Australia that really was the turning point. Government then sat up and acknowledged that they do have people up there and that they should be looking after them and trying to do the things they were supposed to be doing. Ever since then things started to pick up right up until the High Court decision on the *Mabo* case. It was also time for us to sit down and plan a strategy as to what our future holds – what future directions we should take and we developed a 5 year Regional Development Plan. Also rather than as in 1988, when we were just saying we want independence, we have now done all the homework, particularly economic analysis and we have found that both economically and politically we cannot become independent, as in sovereign independence but there are alternative ways of becoming autonomous while still remaining part of Australia. The options are there.

One of the ways we hope to gain from this Conference is to discuss the development of a Marine Strategy as part of our vision for Torres Strait which involves working towards self-government by the year 2001. If you look at a map of Torres Strait, it is a distinct region. The High Court decision will not just affect Murray Islanders and we want to talk to government about what the *Mabo* case will mean for us.

What we are trying to do is to go to government with a package for the rest of the islands including all reefs, seas and the whole Torres Strait area. We are hoping to go to government very shortly, but it is important to plot our course carefully and slowly. After meeting with the Queensland Premier and Minister we will have a tripartite meeting to get all views and work out what is achievable and suitable for all parties concerned. Our concerns will be first and foremost rather than government's – that will be our approach. We are not rushing it, it won't happen over night but the goal is set for us: self-government by 2001. We hope to achieve the same as our Canadian brothers. We have the same aims and aspirations and hopefully we can achieve the same ends if we all pull together.

I have provided this background so that you can understand why we want to develop this Marine Strategy. The outcome of that will have a large impact on the future of Torres Strait.

Discussion

Frederik Harhoff: The Greenland experience is a terrific example of the things you are talking about with regard to marine management. The Greenland Home Rule system has a legislative body and executive body which have full power over marine management, including the handing out of quotas to fishermen, agreements on total allowable catch, whales, etc. All these powers are in the hands of the Greenland political system which has been established with the home rule.

In your case you have to have friends to back you up. This is the same game that goes on everywhere. The Cook Islands seem to have everything you want. They are close by in the southern hemisphere, they are also in charge of their marine management and have established an exclusive economic zone in accordance with the law of the sea. They also have the right to direct and control traffic through their marine area. Denmark used to impose heavy duties on all sea traffic between Denmark and Sweden: ships of a certain kind, ships carrying dangerous toxic substances. Money could be collected from that and used for Torres Strait. Imagination and fantasy will provide a lot of possibilities and there are precedents.

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A MARINE STRATEGY FOR TORRES STRAIT

Monica Mulrennan, Postdoctoral Fellow, North Australia Research Unit
& Co-ordinator of Marine Strategy for Torres Strait
(now Dept Geography, McGill University, Montreal)

and

Victor McGrath, ICC, GBRMPA and
Assistant Co-ordinator to Marine Strategy for Torres Strait

Victor McGrath

We have now come to a stage where we want to talk about the development of this Marine Strategy for Torres Strait. In leading up to all this I would like to explain that the ICC came to Darwin a few days earlier so that they could do some preliminary work on how they wanted to approach this. In keeping with the theme of turning this whole business around they have changed the title of this project. It was originally called a Torres Strait Marine Conservation Strategy but is now known as the Marine Strategy for Torres Strait. In saying that it has been turned around I am referring to the fact that everything in the Torres Strait leads with 'Torres Strait' so that we have the Torres Strait Baseline Study and the Torres Strait everything else. I think it is very fitting that this Strategy should be different.

Yesterday we discussed a number of issues facing the people in the Torres Strait. We talked about the Baseline Study and what it did as well as other problems that exist there which are not being addressed. Today I want us to spend what little time we have left developing a framework for the development of the Strategy. As both Peter Jull and Getano Lui have pointed out the Strategy is based on what is known as the 'Principles and Objectives for the Future of Torres Strait'. Garth Nettheim also talked about the *Mabo* case in his paper and the fact that the sea claim, including the local reefs, was dropped from the original claim to assist in the speedier process of getting the land claim through. We are under no delusion as to what we are tackling in trying to develop a Marine Strategy from the perspective of the Torres Strait people. What we are now trying to do is to pick up the issues previously left in the 'too hard basket'.

The ICC have decided that it is time now to do something positive in response to all these inquiries, surveys and bits of research that are going on continually – a situation that we have a lot of problems dealing with when operating out of the ICC, with limited staff, and are faced with people coming in all the time wanting to know more about marine problems and issues. So what we have decided to develop is something which sets in concrete what Torres Strait people see as the way they want things managed there. Some of the things that come out of it no doubt will not be acceptable to governments, however, that is the way it is going to be.

So what we have decided to develop is something which sets in concrete what Torres Strait people see as the way they want things managed there. Some of the things that come out of it no doubt will not be acceptable to governments, however, that is the way it is going to be.
(Victor McGrath, 2 October 1992)

Monica Mulrennan

A number of issues currently impact upon or threaten the environmental quality of the Torres Strait marine environment. These issues include human and non-human impacts, some of which have immediate and obvious impacts on the environment and others which can be more subtle and difficult to relate to a particular cause. Environmental issues affecting the Torres Strait can also be considered in terms of local issues and those which impact upon the region from outside, most notably from Papua New Guinea and Indonesia, and also global scale influences.

We have spent much time already over the past couple of days discussing many of these outside influences. Considerable concern has been expressed by the Islanders about possible future impacts on their marine environment and its associated resources by runoff and discharges from Ok Tedi mining operations. These impacts include potential heavy metal contamination of important commercial fisheries such as prawn, mackerel and rock lobster fisheries; damage to coral; detrimental effects on endangered species such as dugong and green turtles; and potential human health problems from increased metal content in seafood.

Other concerns relate to the danger of an oil spill from international shipping, offshore Papua New Guinea oil wells, and increased tanker traffic from the recently opened oil terminal in the Gulf of Papua. The provisions of Reefplan (GBRMPA 1990) and the international agreements which we spoke of yesterday are particularly important as marine pollution problems of this nature can only be addressed by regional agencies and governments. In addition to these current threats to the environmental quality of the region, Indonesia has plans for a pulp mill at Merauke and to commission between seven and twelve nuclear power plants. Such developments are of grave concern to the inhabitants of the Torres Strait.

Another issue of increasing concern to the Islanders is that of projected climate change and sea level rise. The best projections indicate that within the next 30 years it is likely that the frequency of extreme climatic events will increase, that the intensities and possibly also the frequency of tropical cyclones will increase, and that sea level will rise on average by about 20 cms (IPCC 1990). The most likely direct impacts of these changes in the Torres Strait will be increased coastal inundation and flooding, salt water intrusion of ground water systems, and changes to coastal landforms. Such changes would be particularly devastating to the central low-lying sand cays, such as Coconut and Warraber Islands, and the north-western low islands of Saibai and Boigu, where coastal erosion and net shoreline retreat are already

serious problems. For example, eco-refugees moved to the Cape York Peninsula in the 1940s from the flood prone island of Saibai and many from the original island community on Coconut Island evacuated to Warraber Island because of over-exploitation of limited ground water supplies.

The region is already extremely vulnerable to coastal change. The possibility of even the most conservative estimates of sea level rise will have dramatic implications for the likely survival or disappearance of many of the islands. The repercussions of salt contamination of bore water, together with the economic costs of maintaining and building roads, sea walls, ramps and other facilities also threatens the sustainability of the continued existence of many of the islander communities. Climate change and sea level rise is a global effect, not easily addressed by the Torres Strait Islanders. There is, however, much that can be done in terms of highlighting and understanding the possible impacts of such change and in developing useful ways of mitigating or adapting to the adverse impacts of that change.

From our discussions so far it would seem that most of the issues affecting marine pollution and the depletion of marine resources are largely dependent on external forces outside the control of the local Islander inhabitants. The Torres Strait Treaty between Australia and Papua New Guinea was drawn up to protect the marine environment, safeguard the interests of the traditional inhabitants, regulate mineral exploitation, and encourage cooperation between Australia and Papua New Guinea over commercial catch sharing arrangements. However, as earlier speakers have explained, the Treaty is in many respects empty of any real clout, with much of its implementation dependent on the good will of the two signatory countries.

There are also international agreements to which Australia is a party, such as the SPREP (South Pacific Regional Environment Programme) Convention and the Apia Convention. Such agreements provide legislative and institutional support and promote recognition on international and national political agendas. In this regard the development of a Marine Strategy might be seen as a useful lobbying tool to take to Canberra and overseas as a means of highlighting Islanders' concerns and calling for increased local control over issues which directly affect their environment and livelihoods.

But this is only part of the Torres Strait story. There are other issues which threaten the environmental quality of the Torres Strait – issues which receive far less publicity but in terms of their impact on the quality of the local environment, and indeed on the quality of life for the Islander communities, are no less significant.

Coastal development activities throughout the inhabited islands, whether they involve construction of buildings, road maintenance, barge ramp facilities, airstrip provision or other basic facilities, can have adverse impacts on the natural environment. For example, sand and gravel extraction, dredging, and filling and blasting all cause environmental disruption and can have detrimental effects on sensitive coral reef and mangrove ecosystems. Development issues within the coastal zone are always complex but the size and nature of the island systems within the Torres Strait makes them especially so. The case of the Horn Island gold mine provides another example of the inadequacy of existing legislation concerning developments in the coastal zone.

Development need not and should not occur to the detriment of the natural environment – which is why the ICC have firmly endorsed the principles of

ecologically sustainable development as part of their Marine Strategy. Adherence to a set of basic ecological guidelines, to be developed as part of the Marine Strategy, will provide for both the protection and sustainable utilisation of the Torres Strait environment. Neither should improvements at the local scale be considered insignificant within the regional setting of the Torres Strait. Although concerns about potential risks of a major oil spill from international shipping may make the headlines, it has been estimated that chronic, operational small spills from shipping and handling of oil account for more than 70% of oil in the marine environment, while dramatic, large accidental spills contribute less than 10%. Thus safety measures related to local fuel consumption and energy development must be included alongside regional oil spill contingency plans in any consideration of possible and potential threats to the environmental quality of the Torres Strait.

There is much that can to be done at the local level as well as at regional, national and international levels. Management and protection of the Torres Strait is dependent upon effective cooperation and coordination between individuals and agencies involved at all levels. The tendency has been to direct programs and policies from the top down – an approach which is rarely sensitive to regional uniqueness or appropriate for distinct cultural groups, such as the Torres Strait Islanders. More recently, ecologically sustainable development, coastal management and indigenous self-reliance programs have become national priorities, while the 1992 Columbus Quincentenary, Agenda 21 arising from the UN Rio Conference on Environment and Development, and the 1993 International Year for the World's Indigenous People are focusing world attention on indigenous environments as never before. The climate for initiatives such as the Marine Strategy is right.

The concept of a Marine Strategy was first proposed back in May 1991 when the ICC made the principles of conservation management and sustainable development central to their 'Principles and Objectives for the Future of Torres Strait'. The Strategy's objective is to secure the rights, protect the resources, improve the livelihoods, and encourage sustainable economic development within the unique and sensitive Torres Strait region. The strategy is intended to provide the basis for integrated and comprehensive management of the marine environment and its associated resources. It will also serve as a foundation for the further development of comprehensive regional political institutions, planning and policy-making in the Torres Strait.

The following principles for the Marine Strategy were drafted by the ICC as part of their 'Principles and Objectives':

- the basic premise that Torres Strait Islanders are traditional and current users of the marine environment;
- the identification and confirmation of *sea rights* as part of any land tenure regime, with provision for bona fide local residents who are not Torres Strait Islanders;
- the commitment to a regional economy based in part on marine resources as being both feasible and desirable;
- the recognition that the unique ecosystems and factors affecting these must be managed so as to protect renewable resources and habitat;
- creation of a set of protected areas and species-specific management plans;

- public processes for the development of the Marine Strategy to allow for full benefit of the knowledge and aspirations of the Torres Strait Islander people; and
- public accountability for ongoing management of resources.

Since July 1992 the Marine Strategy has been developed as part of the federally funded Ocean Rescue 2000 Program, established by the Minister for the Environment, Sport and Territories (DEST), the Hon. Ros Kelly MP. This ten year program is designed to provide for the conservation and sustainable use of Australia's marine resources. Progress to date on the development of the Strategy has been concerned with the identification of issues and concerns relating to the Torres Strait marine environment. The Strategy was endorsed by the Torres Strait Regional Council in September 1992. A consensus-building workshop in late September involving ICC chairmen and other Islander representatives considered the title 'Marine Strategy for Torres Strait' to be more appropriate than earlier suggestions and discussed the objectives and principles of the strategy. The outcome of this meeting, together with subsequent discussions, will be released as a draft policy statement in early 1993.

Following the release of this statement, it is envisaged that an assessment of the extent of local marine resource management will be conducted. An Advisory Committee will also be established, comprising a team of individuals and agency representatives with expertise or specific interests in the Torres Strait. Details of next year's work plan are dependent on ongoing funding from Ocean Rescue 2000, which has yet to be confirmed, but it is anticipated that formulation of the strategy will involve the following:

- compilation of a comprehensive inventory describing the different components of the marine environment and the environmental sensitivity of each;
- description of the resources and other requirements essential to the sustainable economic development of the Torres Strait region;
- elaboration of the traditions of *Ailan Kastom* as practised today and the reconciliation of this traditional culture with the economic and commercial systems of today;
- elaboration of the rights and needs of non-Islander residents of the region in the Strategy; and
- review of existing legislation, regulations and government programs, including those which relate to the international context of the Torres Strait region, and a determination of the necessary amendments and accommodations to aid implementation of the Strategy.

The Marine Strategy is clearly a prototype coastal and marine management plan in its early stages. Any suggestions, advice or other contributions you might have in relation to its development and implementation would be most welcome.

References

GBRMPA, 1990. *Reefplan: Marine Pollution Contingency Plan for the Great Barrier Reef*, Transport and Communications, Great Barrier Reef Marine Park Authority (GBRMPA), Canberra.

IPCC Coastal Zone Management Sub-Group, 1990. *Strategies for Adaptation to Sea Level Rise*, Intergovernmental Panel on Climate Change (IPCC) Response Strategies Working Group, Geneva.

Discussion

Getano Lui: To illustrate Monica's earlier reference to the need for greater coordination amongst agencies and government departments, there are 35 public service departments operating from Thursday Island servicing a population of 10,000.

Horace Nona: Another important issue of concern is the lack of educational programs dealing with fisheries and other marine issues within the Torres Strait. For example, we have no courses in marine biology at the high school. If we want to manage fisheries ourselves we will have to go back and educate our people to ensure they conserve what is theirs. An education program must be one of the most important requirements for the Strategy and for Torres Strait Islanders.

Peter McGinnity: Given that this Marine Strategy is such a considerable undertaking, could you provide more details on the resources and also the time frame involved. Also in relation to the expected outcomes, there are technical/engineering solutions to many of the problems you raised, particularly in relation to the adverse environmental impacts associated with coastal development activities. These solutions are of course costly to implement but there are solutions if you have the resources. Could you clarify whether you are proposing to develop a strategy which solves specific problems within the Torres Strait or are you trying to establish a system which will deal with a range of problems over a longer time frame?

Monica Mulrennan: The project is ambitious and our resources are limited. The Islanders realise that they are not suddenly going to solve all the problems in the Torres Strait with this Strategy. Many of the issues are outside their control, but it is important that their concerns, rights, needs, and aspirations are documented. Once that is done they will have something which they can then take to various government departments in Canberra and Brisbane and present the Islander perspective. If that is the extent of what we can achieve in the immediate future and within our present resource constraints then at least it is a stage further than we are presently at.

Steve Mam: We have a long-term view of the Torres Strait. We have been there since time immemorial. Over the past 200 years Torres Strait Islanders have been ripped off – the damage has been done by Europeans who have only short-term views. The Strategy that is being developed in the Torres Strait is to meet you half way – it is a way of getting something back through speaking in your white man languages – it allows us to meet you somewhere along the line from our side of things. It's compromising – we want to meet you half way. But you must have a clear picture of all this – you must have a clear picture of what we want in the Torres Strait – and remember that we have the long term and you have the short term. If I was to be really black about it, what we really want is – we want your money to fix up what you have destroyed. Amen.

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STEPS TOWARDS DEVELOPING A MARINE STRATEGY FOR TORRES STRAIT GENERAL WORKSHOP PARTICIPATION

Monica Mulrennan, Postdoctoral Fellow, North Australia Research Unit
& Co-ordinator of Marine Strategy for Torres Strait
(now Dept Geography, McGill University, Montreal)

The final session of the Marine Workshop was chaired by Dr Terry Fenge†, from the Canadian Arctic Resources Commission, and devoted to workshop discussions on the Marine Strategy for Torres Strait. The first objective was to get some general consensus from the group of the headings and issues that should be dealt with in such a strategy. Secondly, the group was called upon to recommend how the Marine Strategy should be developed – that is, what processes should be involved.

This was an ambitious agenda but the intention was not to actually develop a strategy but, by calling upon the various expertise reflected within the group, to get a first cut of what a strategy document might look like and the processes involved in formally developing that strategy.

To do this meant that the participants of the workshop were engaged in a process of putting words on a white board. Terry Fenge gave the participants a starting point by outlining some of his thoughts on the whiteboard first.

Terry Fenge: I was very impressed by the last speaker, Mr Steve Mam, who spoke from the heart and ended his presentation by saying 'look we want to meet you half way'. That strikes me as a basis for entering into constructive bargaining and negotiation and it is in that spirit that I thought we should approach this exercise.

The process of achieving an effective outcome to the Marine Strategy is a political one. The best approach would possibly involve getting government and other organised interests to respond to a document that you put together. Such a document would not require massive research, documenting of issues or compiling an inventory of resources. A draft document could be put together very quickly by a core group of people. After that you might consider inviting people to participate in a series of public hearings on ground you have chosen.

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† Terry Fenge has until recently worked as Director of Research for the Tungavik Federation of Nunavut where he was involved in the comprehensive land claim agreement which led to the establishment of Nunavut. His experience with the Inuit in policy-oriented research related to environmental planning and management meant that he was no stranger to the sorts of issues the Torres Strait Islanders are presently dealing with.

In the last few days I have noticed a lot of people complaining about other people's processes. Why not consider putting in place a process of your own and try to get government agencies at both the Commonwealth and State level and organised interests to respond to your document. I would suggest that this approach might also have tremendous educational benefits – the whole question of indigenous peoples educating other members of society has come up repeatedly over the last two days and a Marine Strategy document from the Torres Strait Islanders would provide a significant contribution to that educational effort.

These are some points that I jotted down:

1) Principles of the Marine Strategy for Torres Strait

   - sustainable economic development
   - marine conservation
   - compensation arrangements for damage
   - treaty innovations
   - local control of the resource base
   - allocation of resources

2) Question of jurisdiction and control (in relation to implementing the Strategy):

   - who has got it?
   - what is the extent of it?

3) Institutional framework to deal with different issues tackled by the Strategy:

   including issues within geographical framework, ie work within and a broader framework to cope with issues outside that impact on the Torres Strait region.

4) Issue inventories:

   - what specific issues have to be addressed?
   - two key sets of issues:
     – wildlife management, eg harvesting allocation
     – wildlife habitat protection, eg conservation management
   - funding for research – continued research and monitoring required

The group was then given ten minutes to write down some headings that they thought should be included in the strategy. Following that, Terry Fenge moved to the whiteboard to work out the level of consensus on the headings and issues that should be addressed. Some consensus had already been reached on the principles that would provide the bedrock of the Strategy. Many of these principles had been outlined by the ICC in 'Principles and Objectives for the Future of Torres Strait'. It was also agreed that the inclusion of 'treaty renovations' amongst the principles was justified in light of the discussions and general dissatisfaction expressed over the past two days. Not surprisingly it was the issue of jurisdiction and control that dominated the workshop discussions.

Dermot Smyth asked in relation to the issue of control whether the Islanders envisaged that the Strategy, in the longer term of about 10 years, would be implemented by a self governing body?

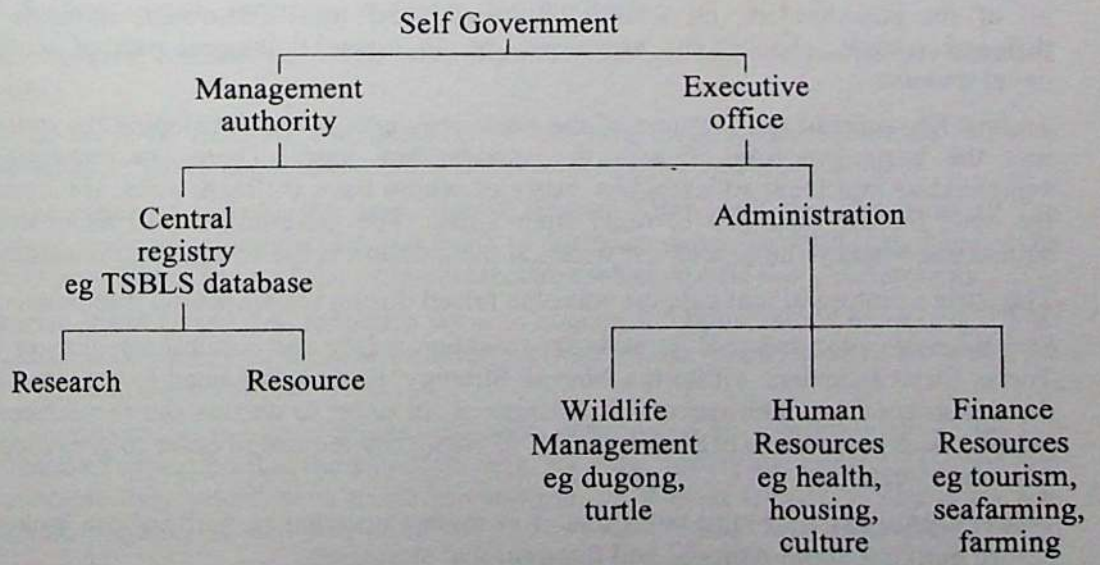
Getano Lui confirmed that this is certainly what they had in mind by the year 2001.

Dermot Smyth then recommended that although outside agencies would have to be considered, the strategy should be planned with self-government in mind. He also suggested that the most powerful tool for negotiating the terms of the Strategy is a blank piece of paper, allowing the strategy to develop and evolve from the grassroots with maximum involvement of all Torres Strait Islanders. 'It is essential', he said, 'that all Torres Strait Islanders feel they own the strategy'. He emphasised the need to build the strategy from the bottom up – by going to the outer islands and asking the Islanders to what extent they want to be controlled: locally; by outside experts; or by ICC regional control? Dermot also advised that as the Torres Strait is not a uniform area, care should be taken to facilitate the diversity of the region within the strategy.

Getano Lui explained that the ICC through the community councils exercised total control at the local community level. Unlike many Aborigines, the Islanders have always been on their land and have therefore continued to exercise control over it. The loss of control is in relation to the sea since the Islanders only have control down to tidal levels. Getano went on to say that since the High Court decision on the *Mabo* case they now have to prove culturally that they own Torres Strait and have ties with it since time immemorial. He suggested that although the Torres Strait Islanders can take care of the cultural side of things, they need 'Europeans' to help make the two halves meet. That is, that 'total control' is dependent upon a successful merge between expertise, science and resources on the one hand and cultural identity and proof on the other.

At this stage **Steve Mam** and **Alan Reed** put forward their proposal for a Torres Environment Resource Management Strategy. They presented the following draft of the basic structure of TERMS on the whiteboard.

Torres Environment Resource Management Strategy (TERMS)



Tony Simpson suggested that TERMS only provides a possible answer to the question of internal management and that some important questions needed to be asked before any such strategy could be developed:

- where are we now?
- where do we want to go?
- how do we get there?
- what resources are there?
- who is obstructing us?
- what is their power; is it legitimate?
- what is our internal situation?
- what is our external situation?

Getano Lui said the proposal was too hypothetical, providing no strategies or solutions to overcome problems or issues.

Frank Gleeson asked how one might go about controlling commercial fishing under the TERMS set up – 'Would you assume total management?'

Getano Lui provided an unequivocal answer – 'We want total control of the air, land and water! At the moment we can't even throw out a fishing line because there are so many fishing areas and laws.'

Frank Gleeson suggested that the Islanders should be addressing today's political realities rather than the aspirations of ICC councillors, as reflected in TERMS. He proposed that it was more realistic for the Islanders to be looking at co-management, perhaps using the idea of resource rent as a means of increasing revenue and control.

Victor McGrath suggested that TERMS was too far down the track and cautioned the Islanders against getting bogged down with what might happen and suggested that they look at the nitty gritty of what they can achieve here and now.

Astrida Mednis got the discussion back on track by directing the group to a framework, suggesting that the overall aims of the strategy need to be identified first and then for each goal a strategy should be developed to achieve it. Consultation with all of the stakeholders, eg BHP, commercial and local fishermen, islanders on different islands, should, she suggested, be an essential integral part of strategy development.

Joseph Elu pointed out that one of the great problems in the developing the strategy was the basic question of who the stakeholders were. There are international stakeholders and local stakeholders many of whom have different aims. He stressed the need for the Islanders to unify their aims. 'The government will listen to the squeakiest wheel – the squeakiest wheel at the moment is the commercial fishermen.'

The issue of international support was also raised during the workshop discussions.

Sue Samon suggested that in addition to safeguarding the cultural integrity of the Torres Strait Islanders within the Marine Strategy, there was a need to get status for the document from international organisations. In order to do this she recommended getting ideas from these organisations as to what they require in order to give support to such a document.

Warren Murgatroyd suggested that it is more important to sort out the backyard before thinking about national and international strategies.

Charles Missi reiterated the importance of telling their story to a wider community. 'We can talk about plans and ideas, but we need to get support in order to implement them. We need to educate the wider community.' On the issue of self-government, he added that the government was unlikely to give the Islanders self-government on a platter – 'we have to fight for it'.

Terry Fenge intervened at this point to focus the discussion back to the development of the Marine Strategy. He proposed that the workshop participants attempt a synthesis of the preceding discussions by suggesting a number of headings or key points for consideration within the strategy. The following points were proposed from the floor. The points are not in any particular order of significance and there is considerable overlap and repetition. Nevertheless the list is a useful summary of the major themes raised during the workshop discussions.

Key points in the development of a Marine Strategy for Torres Strait:

1. Funding
2. Jurisdiction
3. Review existing laws/regulations/institutions
4. Geography/boundaries
5. Range of substantive issues, eg wrecked trawler
6. Management guidelines (future), with stakeholders in mind and in terms of local reference
7. Customary law and boundaries/management
8. Range of natural resources
9. Public relations/education
10. Current users/stakeholders
11. Rights of non-indigenous islanders
12. Information/research (environmental, social & cultural) leading to decision making
13. Timeframe for strategy
14. Review, update, revisions, evaluate, and feedback

Some specific comments, which were made in relation to these points, are outlined below.

On the point of funding, the question of utilising existing legislation to increase revenue from government and other stakeholders in the Strait was raised.

On the point of jurisdiction and control, **David Allen** said that the basis of the strategy must be articulated on the basis of historic ownership and that this in turn would provide the basis of the political structure which would carry the strategy.

Charles Missi raised the important issue of economic opportunities by asking, 'Who is making the money in the Torres Strait? Where is the money going? How can we get a larger slice of the pie?'

The importance of public relations/education was voiced by a number of people and included a suggestion that the Islanders network with Aboriginal coastal communities with whom they would have much in common, eg Wessel Islanders. The point was made that because of the isolation of the Torres Strait, it was difficult to keep up with

environmental problems elsewhere. Conferences and workshops were considered useful in this regard.

Frederik Harhoff again advised the Islanders not to underestimate the usefulness of international legal processes.

There was general agreement that an internal review process would be a useful means of keeping the Marine Strategy on track. **Terry Fenge** suggested that this would provide a way to continue to periodically breathe life into the strategy. **Warren Murgatroyd** added that it would also ensure that defunct projects did not continue, regardless of changed circumstances.

The final minutes of the workshop afforded an opportunity for some general comments on the Marine Strategy. **Terry Fenge** stressed the need to have quantifiable targets. **Sue Samon** felt that the strategy, as reflected by the key points above, was too ambitious and too long term to be workable. **Terry Fenge** partly agreed but explained the importance of having a wider framework as a starting point.

Steve Mam complained that there were too many 'white-man' words. **Terry Fenge** noted that this was a common complaint from Inuit at similar forums where the Inuit people call them 'six cylinder words'.

Tony Simpson suggested that all the 'curly political questions' were left out then we would have a working strategy. **David Allen** emphasised the need to have a clear idea of the long term so that the basis for tomorrow's claims could be built in and prepared for at an early stage. But there was, he said, also a need to deal with immediate problems like the fisheries management so that the strategy can be effective from the outset. He suggested subdividing the key points into short-term, mid-term and long-term considerations so that the Marine Strategy could be implemented now without losing sight of longer term objectives.

Post-Workshop Update (to July 1993)

Since the Marine Workshop, in October 1992, a number of developments have occurred which are directly related to many of the issues and processes discussed.

The Resource Assessment Commission has held another round of hearings which included a visit to the Torres Strait, timed to coincide with an ICC Workshop on the Marine Strategy in June 1993. It is perhaps too early to fully assess the likely contribution of the Coastal Zone Inquiry to the issue of indigenous involvement in the marine and coastal environment. However, the increased importance their interests have received on the RAC agenda since *Mabo* is certainly apparent, the high point being a successful two day Workshop in Canberra in March 1993 when the Commission met with Aboriginal and Islander representatives. The final report of the Inquiry is due for release in November 1993.

The final report of the Torres Strait Baseline Study will also be released later this year, in December 1993. The ICC are already involved in discussions about the implications of the Study's findings, particular in terms of their possible impact on the health of local Islanders.

Significant progress has been made regarding the development of the Marine Strategy for Torres Strait. Arising from suggestions made during the Marine Workshop, together with further consultation, discussion and research, the ICC, with assistance from NARU, released a discussion paper entitled *Towards a Marine Strategy for*

Torres Strait in April 1993 (Mulrennan et al 1993). The principles and objectives of the Strategy were outlined together with a background to some of the problems and issues that provided the initial impetus for the Strategy. The document has been widely circulated among governments and other interested parties, and comments and written submissions were invited. The discussion paper is currently being revised to incorporate the feedback received and will be released early in 1994. A two day workshop was held on Thursday Island in June 1993 to discuss various options for increasing Islander involvement in the management of the Torres Strait environment and its resources. Most of the key government departments represented in Torres Strait attended at the invitation of the ICC. Following discussions at that Marine Strategy Workshop, the Marine Strategy Advisory Committee made a number of recommendations to further advance the development of the Marine Strategy for Torres Strait. The recommendations are summarised below.

(1) that the regional focus of the Marine Strategy be continued through the development of a **Regional Environment Management Plan**, which would incorporate the following issues:

- oil spill contingency plan for Torres Strait;
- international shipping concerns;
- review of Treaty – contents and administration arrangements;
- international environmental issues – eg PNG mining impacts; ratification by PNG of the Wellington Convention; migratory and endangered species; and dugong and turtle catches in PNG and Indonesia;
- health studies of the effects of heavy metals;
- implications of enhanced greenhouse effects – sea level rise (liaison with small island nations)
- development of a regional waste management strategy;
- development of a set of regional guidelines related to environmental impact assessment;
- species specific management plans;
- funding for environmental resource management;
- liaison and negotiation with State and Commonwealth fisheries;
- liaison with QDEH, GBRMPA, and ANCA;
- cooperation with PNG, Cape York communities, Torres Shire and other non-ICC communities.

(2) as part of the development of the Regional Development Management Plan (Stage 1), a number of actions were identified which should be followed up immediately, particularly in relation to reviewing the Torres Strait Treaty and seeking options for simplifying and rationalising existing legislation, particularly fisheries.

(3) that the development of the Marine Strategy include a comprehensive consideration of community level issues through the development of **Community Environment Management Plans** and include, but not be limited to, the following issues:

- coastal erosion protection and planning;
- fauna/flora surveys;
- geomorphological surveys;

- waste disposal and water quality;
- site specific environmental impact assessment;
- natural and cultural areas requiring special protection;
- perspectives on sea rights:
  - traditional fishing
  - home reefs
  - buffer zones
  - marine tenure boundaries
  - fishing technology (eg hookah)

(4) that the Community Plans commence immediately with the development of two **Pilot Community Environment Management Plans**.

Proceedings from the Marine Strategy Workshop will be jointly published by NARU and the ICC and available in early 1994.

18

INTRODUCTION TO THE LAND WORKSHOP

Marjorie Sullivan, Senior Research Fellow, North Australia Research Unit
(now Consultant, Canberra)

The workshop began with a brief introduction by the convenor who pointed out that the program topics were those that came up in the planning meetings for the conference. The speakers' aims were to raise questions and highlight issues for discussion.

Within the overall theme of the conference the Land Workshop topics spanned both present and future issues. The current situation was discussed in terms of both land and people, accepting that people cannot be separated from their environment. One focus for both the workshops and the first morning's speakers was a consideration of the point we have reached in Australia regarding indigenous and environmental issues and what could be learned from other parts of the world.

The convenor suggested there were two sets of aims for the workshops: longer term aims in which self-determination, or self-government of land and natural resources were most important, and in the shorter term, a number of issues that deal with Aboriginal wishes concerning the sustainable management of land resources. She suggested that the workshop would need to consider incorporating these management practices into the broader planning and policy-making structures of both Commonwealth and State frameworks.

It was hoped that the discussions would contribute towards framing recommendations to land councils, ATSIC, government, and research bodies. It was important that recommendations should be directed towards somebody. Participants were urged that if they had a good idea that somebody ought to take up, to identify who that body should be, with the hope that representatives from various organisations attending the conference would try to make sure these suggestions were then placed on the appropriate agendas.

As the workshop proceeded, the discussions fell into three main areas: the *Mabo* case and its implications; problems associated with land use and management, especially with securing money to manage land and resources; more general issues of community self-management and self-determination.

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THE *MABO* DECISION AND ITS IMPLICATIONS A SUMMARY

Peg Havnen, Centre for Aboriginal & Islander Studies, Northern Territory University

It is indicative of the rather ignorant reception of the *Mabo* decision that the *NT News* buried it somewhere in the back pages, whereas *The Australian* made it a front page story; and yet it would appear that it is in places such as the Northern Territory, northern Queensland and the northern part of Western Australia where the *Mabo* case will have the greatest impact. There is evidently quite a lot of education that has to go on, both within the Aboriginal community and in the non-Aboriginal community and in particular with the media. They are the channel through which we hope to educate the white community to enable debate and discussion to take place and I think we really have to start with the media because they are the most important channel for getting out information.

Those of us who lived in the Northern Territory during the days when the land rights legislation was first enacted and the first land claims were being processed, remember what a negative role the media played in that situation. I do not think we want to repeat that same process again, because it was highly politicised and I firmly believe that it was used to polarise the black and white community, and that the degree of racism that exists within the Northern Territory has been caused in some part by the politicisation of issues and the role of the media.

It has struck me that the *Mabo* case deals with continuing indigenous rights and whether this equates with the mechanism of land claims under the Northern Territory Land Rights Act I am not quite sure. I think the next question that arises is that it has positive implications for those people who have a traditional claim to land. But in the same manner as the Northern Territory Land Rights Act it seems that people who are urbanised or who were dispossessed through some historical process are still not going to benefit from the *Mabo* case.

[Mabo] has positive implications for those people who have a traditional claim to land. But in the same manner as the Northern Territory Land Rights Act it seems that people who are urbanised or who were dispossessed through some historical process are still not going to benefit from the Mabo case.
(Peg Havnen, 1 October 1992)

I think also, there should be discussion about the question of national parks. Apparently national parks could be affected by this *Mabo* case, in that the setting up of national parks may not necessarily have interfered with traditional usage by people who could be claimants. So that again is a fairly interesting question, particularly in areas like the Kimberley.

Discussion

Garth Nettheim: People may now be able to use the *Mabo* decision to claim pastoral country which is their country within Australian law, whereas they simply cannot get it under the *Aboriginal Land Rights (Northern Territory) Act 1976*. What is not clear is whether under *Mabo* principles the people who regain the land would have any more control over mining on or under that land than any non-Aboriginal person might have.

Unidentified people: Declaring a national park probably could be used as a device by governments anywhere in Australia to alienate lands.

Brian Keon-Cohen, the barrister who argued *Mabo*, has suggested that if there is land which is regarded as Crown land and the people know that it is their land, then they should just move on to it and set up an outstation. Then, if the government wants it or somebody else wants to get you off, they have got to prove that you are not lawfully there. Such a move gives Aboriginal people a bit of a tactical advantage.

If somebody is about to do something on your land, like flood it for a dam or run a railway through it, one can place an injunction to stop it. After the *Calder* decision, the James Bay Cree were concerned that large quantities of their land were about to be flooded by a hydro-electric development. They went off to court and got an injunction. That injunction was lifted at a later stage on appeal, but by then the Canadian government, the Quebec government, Hydro Quebec and everybody concerned were negotiating with the Cree peoples of Northern Quebec. The result was an agreement.

Peter Costello: Self-determination lies on the individual Aborigine, in their feelings, and in their hearts. I was removed from my traditional land and therefore this self-determination must be understood very clearly, if we are Aboriginal we must know this carefully. Even this title what we got, it is also in us, with no one else not the government, it is in us.

In response to questions and comments on taking traditional foods from reserved land the following comment was made.

Terry Fenge: Indigenous people are able to hunt and fish in national parks in north America and Canada. These parks in Canada and Alaska are, to a significant degree, demonstrating that there can be control by aboriginal people. It is inconceivable in Canada that that would not happen in a national park. I would also say that there are very close relationships in Canada between national conservation organisations and aboriginal organisations and I think there should be because they have a shared agenda. They both stand for people who want to establish a rational basis for conservation.

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ABORIGINAL INVOLVEMENT IN NATIONAL PARK MANAGEMENT

Arnold Wallis, Australian Conservation Foundation (ACF)

> My people are those of the Wuthathi clan of Shellborne Bay in Cape York Peninsula. Our clan's totem is Bagongara the manta ray. We are also known as the White Sand people. On the other side I am also of Torres Strait Island descent, my mother being born on Thursday Island.

I would like to thank the organisers of this conference for the opportunity to be here. ACF is a non-government and a community based organisation. This organisation has a policy on indigenous land and rights. It is probably the first green organisation to develop such a policy.

There are some conservation groups, members of the political fraternity as well as non-government bodies, that are for one reason or another opposed to the reality of such a species as a 'Black-greenie'. Possibly it is fear which has drawn a multitude of critics out of the woodwork, not without cause in some cases I might add. Evidence of this continually clutters my desk top with even members of our own organisation resigning over the land and rights policy. But because the ACF is committed to its policy on Aboriginal involvement in nature conservation areas they are resigned to losing the small percentage of the membership that oppose the policy.

On the subject of Black-greenies, traditionally Aborigines were the ultimate conservationists. I say traditionally for a few reasons which I will come to in a moment. First let me address this fear that is floating around that indigenous people are unable to manage national parks, nature conservation areas or nature reserves. The fear seems to stem from the idea that if we had control of such areas, we would:

- lock them up;
- shoot everything that moves;
- chop anything that swayed; and
- we may make something of ourselves and through an environmental initiative enhance our culture and gain control of areas that mean more to us than dollars and cents. This is perhaps the greatest fear.

Negotiated management plans would address those fears. The time has now come that individuals and groups need to realise that the management of high conservation areas are being entrusted to the original custodians. This is occurring either as lease-back arrangements or in some cases custodians have bought country themselves and are now leasing their own country back to the government for national parks, keeping themselves on as the majority on those boards of management to ensure it is managed traditionally and successfully.

Country is being revitalised under Aboriginal control because it is still being managed in the old ways. Tony Tjamiwa, from the Uluru board of management, made this statement at the Albury conference (hosted by Charles Sturt University) focusing on Aboriginal involvement in parks and protected areas:

> ...our park management is running straight. In our park, Aboriginal law is in the front guiding the way. The board of management doesn't get pushed around, they look after Aboriginal laws (Tjamiwa 1992, 7).

To expand on this point which Tony and countless others have documented, let me say this: time and time again you have heard our old, and lately younger, people speak of land-human relations and they have tried to explain it to many who do not understand. It seems to be a difficult thing to explain. What it is in my opinion is a science peculiar to indigenous societies which, in short, encompasses religious and social laws that if not adhered to, result in a break down of the society itself. It can be said that these laws are intertwined with the laws of the environment.

Particular groups which talk of whether to support or not to support Aboriginal land management initiatives, need now to widen their vision and see that this is already happening. Indigenous communities are involved in joint and co-management arrangements. That this has split some of us into supporters and non-supporters of various degrees is a fruitless waste of energy, time and money. So much can be achieved by a united front.

An educational process needs to be developed between each of us. Governments need to restructure department policy to allow positive land management processes to develop which insist on Aboriginal and Islander contribution. Some departments are already aware of the value of indigenous input in land management and are using Aboriginal and Islander elders and rangers in achieving effective land management skills. Educational institutions such as the community ranger training program like the one at the Cairns TAFE college are a positive catalyst for co-management in indigenous communities. Programs like this and others should be supported and encouraged by the government departments that have any participation in the area of land care management.

This has to be a two way learning process. It needs to be a negotiated process with each respecting that the other has something of equal value to contribute to the process of land management.

This has to be a two way learning process. It needs to be a negotiated process with each respecting that the other has something of equal value to contribute to the process of land management.
(Arnold Wallis, 1 October 1992)

There is some validity in the fears about the activities of some Aborigines in national parks. Not all of us are conservation conscious – this may be due to the loss of ancient cultural concepts which work towards enhancing the ecology. However, this can also be said of other Australians as well. But I will suggest that oral and historical aspects

of Aboriginal culture would more likely be geared toward respect for the total biodiversity than the culture of non-indigenous societies. This is so, irrespective of the diversity within the culture itself. It is true that capitalistic society in the grip of a recession sees the mighty dollar as a more important short-term priority for the nation than the health and well-being of you and me or the environment we are trying to survive in, but in the long term it will be the destruction of our environment that will destroy us all. No one will tell you this better than Aboriginal people watching it happen on their lands.

This is not the most encouraging situation to be in, especially when looking at long-term goals for future generations, and the future of the nation. We who sit in positions of decision making – will we be looked upon with disapproval for the position we take at this point in time? We need to be careful not to contribute to the already destructive processes that are happening around us. If ever a people had an opportunity to stem the flow of environmental and cultural destruction like that which is happening in other areas, it is those of us who live on Aboriginal communities. Those of us who live on our own communities and can put into place sound policies for the environment can address the situation before it gets out of hand.

I will now explain in more detail the cultural aspects of Aboriginal land management. In some parts of the continent those old or ancient ways of land management are not lost and as with the culture generally, are being modified to suit modern land and water management plans. An example of this is the Kowanyama community in Cape York Peninsula, which has developed a strategy for the Mitchell River catchment area and has formed an advisory body to manage the area.

Certain aspects of Aboriginal society still exist that will assure protection for the environment. For example, not all members of the society will eat a particular fauna or flora because of their totemic attachment. Certain species are only eaten in the right season and certain ceremonies are still carried out to enhance plant and animal life. There are still laws in place to safeguard the environment, which are strictly observed by the initiated and by the new generation of indigenous children. This is maintained through our old people assisting in the development of school curriculum within their communities (Council of Elders, Kowanyama). As well, new community by-laws are being aligned with traditional indigenous laws.

It has been noted that national parks such as Uluru and Kakadu controlled by Aboriginal boards of management have fared better than those where the land has been left to other methods of sustainability. It can be pointed out that many of the land management practices in place today are having a detrimental effect on the ecology (eg poor management technology, lack of funding, uncontrolled mining and very little monitoring of national parks and other areas of national importance). Aboriginal people have a right to care for country especially where indigenous communities are living in what is traditionally termed their own. This ability is being recognised by the governments of the worlds and by our own Federal government. But restrictive legislation has only worked against this positive process to enhance the environment and the nation.

The fiction of *terra nullius* has not only robbed the original inhabitants of their rights but it has also robbed this country of good land management practices as well. There has been talk of the new wave of dispossession – don't let it be green for the sake of

being green, or a national park for the sake of just having another national park that is not going to be managed properly. We have too many conservation areas that are not maintained sufficiently. For instance, the Department of Environment and Heritage in Queensland has a total of seven department rangers to cover the whole of Cape York Peninsula. We do need protected areas but let's do it properly. Let us put in place some proper employment strategies to more effectively ensure that these areas are protected. What we have at the moment are huge areas of uncontrolled unpoliced country where people are running rampant shooting, four-wheel driving, raiding nests, and trapping wildlife for illegal export, and very little being done about it.

If we are serious about protecting the environment then there are indigenous caretakers out there who are the local custodians. They have local knowledge and good land management skills. Putting them to good use in the overall development of creating nature refuge areas will bring about positive results for the environment. An example of how this may be achieved would be to employ the 60–70 rangers who will graduate in 1994 from Cairns TAFE ranger training program. This was an initiative by the Aboriginal Co-ordinating Council on behalf of the Cape York Peninsula Aboriginal communities. Indigenous communities are already developing sound environmental policy for their own lands outside of national parks. This is because they see the value and good sense of such practices, and a means of sustaining their culture in an ever changing capitalistic society – a western money making society that has very little respect for the values of what nature has to offer.

Those opposed to Aboriginal land management practices do not understand what it is that allows indigenous people the relationship with country that legitimises their rights to management of land and sea. It is a system that culturally assures good management practices.

Finally, it is worth noting, from a more global perspective, that many countries are recognising the vital role their indigenous peoples have to play in caring for the environment. I quote Maurice Strong, the Secretary General of the United Nations Conference on Environment and Development (UNCED):

> We need to look to the world's 250 million indigenous people. They are the guardians of the extensive fragile ecosystems that are vital to the well being of the planet (quoted in *Land Rights News*, May 1992).

I hope Australia will be amongst those who heed this warning.

Reference

Tjamiwa T, 1992. Tjunguringkula Waakaripai: joint management of Uluru National Park, *in* Birckhead J, deLacy T & Smith L, *Aboriginal Involvement in Parks and Protected Areas*, AIATSIS Report Series, Aboriginal Studies Press, Canberra.

21

LAND ISSUES

John Christophersen, Cobourg Peninsula

If we are going to start talking about Aboriginal land, and the management of that land, we have got to know what the hell is going on out there in the rest of the world. (John Christophersen, 1 October 1992)

If we are going to start talking about Aboriginal land, and the management of that land, we have got to know what the hell is going on out there in the rest of the world. The real facts are that during the 20 years since the first Earth Day in 1970, the earth lost tree cover over an area nearly as large as the United States east of the Mississippi River. Deserts claim more land than is devoted to crops in China. Thousands of plant and animal species, which were with us on this planet in 1970, no longer exist. The world's farmers lost as much top soil as covers India's crop land, and more people joined this planet than inhabited here in 1900.

And we are the mob, the Aboriginal people, that are under attack because we are getting back to our land. At any given time the government can come along and change that law. The land we have got in Arnhem Land is not secure by any means. If the government wants to it can change it and we will end up with nothing. And the way they can do that is if they look at what they call 'in the national interest'. Where I come from in Cobourg, we have got our land under Northern Territory title. If 75% of the Legislative Assembly vote against it, that land is gone, we have got nothing. And that is what is going to happen all over this country. The only way we are going to stop it, and the only way we are going to make sure that we maintain our title to Aboriginal land, is if we have sovereign recognition of our land. And sovereignty means that we are able to make our own decisions about it. If the government wants to talk to us about it, it must talk to us as nation to nation. If we do not have that, anything can change.

What we have ended up with is a Land Rights Act that covers the Northern Territory. We have ended up with ATSIC, which is supposed to be our political voice. Now to my way of thinking, ATSIC is not really our political voice. What we have also ended up with is a Reconciliation Commission. In 200 years of arguing, there is a hell of a long way to go. So for us to continue, and end up with something that is going to be significant for our future generations (our grandchildren), we have to have a land title

that is secure, we have to be united in that we seek sovereignty and we seek our own government.

Discussion

A person from a land council: Is it not crazy? We have had about eight government inquiries lately, like biodiversity and the coastal zone inquiry. And each time they just add in a few paragraphs about Aboriginal people. They do not say enough, they do not have Aboriginal staff working on the inquiries from the beginning. Always Aboriginal people are left on the edge and Aboriginal interests are left on the edge.

Is there a way we can turn that thinking inside out by pushing – each from our own workplaces or whatever – to look at all the ways that Aboriginal people could be central to conservation? Ways that their knowledge and expertise could be really working on conservation? Ways in which they could derive income from it as well? Ways in which it helps match up the cultural and country interests.

Unidentified speaker: We are frustrated at not being able to fund projects, and we are faced with the dilemma of being unable to secure additional living resources without having secure land title.

We have to drive this bus into the future.
(Barbara Flick, 1 October 1992)

John Christophersen: Where I come from in Coburg we have got Gurig National Park, we have got a board of management which consists of four people from the Northern Territory government and four of our members, one from each of the clans in the park. We can make any number of decisions about what we want in the park, but the government controls the dollars. So if we want to put up more tourist facilities, build a jetty for visitors and other local boats and that sort of thing, we cannot do it because the government controls the money. We want more Aboriginal rangers, 'Sorry, we do not have enough money'. And until such time as we can develop our own economic base without destroying the land, we are still going to be in that situation.

Unidentified speaker: One of the reasons that vacant Crown land is vacant, is that lots of it is uninhabitable in its current state. So for the people who occupy that land, bores must be drilled, transport arrangements made, shelter constructed. But people could not get resources from the Commonwealth government to support that occupation because they did not have secure title. So you cannot occupy on the land because there is no water and there is no shelter. You cannot get funding because you have not got a title, you cannot get title because you cannot squat on the land and it just goes round and around.

Unidentified speaker: If we were able to have our own economic growth as a sovereign nation, we are 2% of the Australian population. In other words, we have 2% gross domestic product, income, or whatever. We could fund our own social

service and health, education and welfare. We would not have to build a nuclear power station and we would not have to have handouts.

Barbara Flick: ATSIC is not a political organisation, it is a service delivery organisation set up by the government. It does not matter how many good people you have in there, you have fundamental flaws in the structure. So, it is not going to expand our situation in this country. The administration of ATSIC costs over $100.2 million a year. That is the administration of it. Last year they underspent their budget by something like $20 million nationally. So they do not even have the capacity, in my view, to spend the money they have.

We are the resource. And now we have to get up for Christ's sake. We have to get up and do something about our situation. We have to drive this bus into the future because if we are not driving it we are being driven by someone else, and that is not the way we want to go.

How often do we come together to set our own agendas. Not very often.
(Barbara Flick, 1 October 1992)

How often do we come together to set our own agendas. Not very often. We do not have the resources. We need the resources. We need to stop responding to every government document that comes out because we will spend the rest of our lives doing it. We have to start saying stop this game, and think about what we want and need. How we are going to assert that?

Sovereignty (and I would like to talk to John more about this issue) – are we talking about sovereignty, or are we talking about Aboriginal rights enshrined in the constitution? If that is so, how do we become part of the process. If it is going to be nine years – we do not have much time to engage ourselves in protest to have some input into constitutional changes. If we are talking about real Aboriginal sovereignty then we are talking about separate economic systems, some sort of separate defence system, policing, legal structures and social justice. Maybe you can do that in regions where the majority of the population is Aboriginal. You might be able to do that in east Arnhem Land or somewhere like that. What about the people in the city, how do they obtain sovereignty? Is the answer working together?

So forget ATSIC, it is a service industry organisation, it is not a political structure. They are not interested in advancing our aim by providing money for land. They are interested in perpetuating the social welfare system by hanging on to the control of dollars. The people making the real decisions are the bureaucrats in the system who have been there since the DAA days. As long as they are there making the decisions. We have good regional councils but that is not where the resources and power are.

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FORAGING IN THE BUREAUCRACY†

ISSUES IN LAND MANAGEMENT AND ABORIGINAL DEVELOPMENT

Elspeth Young, Associate Professor,
Geography and Oceanography, UNSW, ADFA

This paper presents some preliminary thoughts on how appropriate forms of land use and management can best contribute to Aboriginal development. Development is defined here as a process of change which improves people's present situation and allows them to achieve a better lifestyle for the future. That improvement should include economic advancement, through better employment prospects or higher incomes, and the attainment of a greater degree of economic independence. It should also include the attainment of greater social stability, stronger political influence and the maintenance of cultural identity. It is therefore a change which affects all aspects of people's lives. While this seems the logical approach to development, and certainly the one which appears to be most favoured by many of the people who are directly affected, it is not necessarily the approach adopted by those who control the basic resources, primarily government agencies.

In Australia, governments, both at national and state level, usually emphasise the economic aspects of development more strongly than its social and cultural aspects.
(Elspeth Young, 1 October 1992)

In Australia, governments, both at national and state level, usually emphasise the economic aspects of development more strongly than its social and cultural aspects. This approach, commonly adopted by industrialised countries, occurs both in overseas development programs for the 'Third World' and also in internal programs, including those for Aborigines. For Aborigines, who stress that most social and economic elements of their lives are equally important and interdependent, this

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† This felicitous expression, which came up in discussion following this paper, captured the essence of many Aboriginal government relationships. Allan Dale in earlier discussions talked about 'farming the bureaucracy'.

presents problems. These problems are even greater when governments fail to recognise cultural differences in attitudes to social and economic change. Problems such as these have been hindering Aborigines from achieving their development goals through using their land and its resources in the ways which they prefer.

Aboriginal development: differing approaches

Approaches to Aboriginal land and resource development differ according to the agencies and individual communities involved. Different approaches at different scales can be summarised as follows:

(a) Federal government approach

This is a large-scale perspective, with emphasis on national interests; the main stress on exploiting renewable and non-renewable resources for commercial gain.

(b) State/regional government approach

This involves a medium scale perspective which recognises regional needs. This may involve playing off regional interests and national interests. For example, state governments may accept federal assistance for regional development projects even when they know that their priorities differ from those of federal agencies. Later, they manipulate both their own and the federal frameworks to reach an acceptable compromise. Development at regional level can mean less emphasis on commercial gain.

(c) Community and/or individual approach

This is small scale, with local aspirations extremely important. This can mean that 'alternative' forms of development (which could include non-cash activities) receive strong support. Social and cultural needs and the effects of development on the local environment are also likely to be important. However land and resource development for commercial gain may also be stressed.

Approach (c) may well be seen as the best way to achieve satisfactory Aboriginal development. However the regional approach (b) would also be important, particularly for 'umbrella' organisations such as Land Councils. People's understanding of approach (a) may well be quite limited. A major problem is therefore integrating (c) with (a) and to some extent (b).

Successful integration of these different approaches depends on a number of different factors such as finding the right way to encourage development; and finding the correct balance between the different types of priority. Government agencies have conventionally encouraged development from the 'top-down', on the understanding that they control the resources and they are in the best position to make decisions which will benefit their Aboriginal clients. Failure to promote development through the top-down process has prompted many people to recommend the alternative 'bottom-up' approach, whereby the views and desires of the clients provide the foundation for planning for change. Striking an acceptable balance between interests is particularly difficult in hard economic times, such as at present. Governments, whatever the level, perceive the need for stricter accountability and monitoring, and this pushes the concept of commercial profitability even more firmly into focus. For example, the initial discussions on a framework for ATSIC's land acquisition/

management scheme stressed that the land purchased should be capable of commercial development. However it is well recognised that Aborigines place extremely high value on the social significance of land, and that that may override any commercial considerations. Similarly, while Australians in all walks of life have increasingly become aware of the need to tackle environmental problems, many of the recommendations made following the Ecologically Sustainable Development process are likely to be scrapped because they are not based on a policy of economic gain. Such difficulties clearly hinder efforts to integrate the approaches summarised above and discourage attempts to find solutions. However, despite these obstacles, it is still important to construct a 'vision' of what Aboriginal development, and associated methods of land use and management, should be.

Land rights and land management: a basis for the future of Aboriginal communities

Aboriginal interests in land apply to the whole of the Australian continent, and all Aboriginal groups, whether in small towns, cities, reserves or the outback, are concerned with regaining control over as much of their traditional country as possible. This gives them access to resources which can then form the basis for planning their future. However, although all Aboriginal people subscribe to that belief, the practical realities of achieving it are different. Despite current intense discussions over the implications of the *Mabo* case, access to land and other resources is never going to be equal for all groups. The present discussion, in focussing primarily on how Aborigines who already control land are using and managing that resource, acknowledges those inequities and variations. However, highlighting the experiences of those groups which already hold land, through some form of legally recognised tenure (eg NT and South Australian people with freehold title and others with leasehold title), and those which, through negotiated arrangements with other landholders, have some influence over the management of land in which they have an interest (eg through joint management arrangements in some national parks in New South Wales, Western Australia and elsewhere), may help future Aboriginal landholders to overcome difficulties more easily.

If control over the land and its resources is the basis for the future, it therefore follows that land acquisition and land management should be the foundation for community development. Such development requires planning. If planning is to be worthwhile it must consider the total picture. It must not be concerned only with short-term solutions to immediate problems. Assisting an Aboriginal community to boost its income through short-term employment may in the long term do little to help development. Planning must look at the long-term effects of change, and it must take into account the costs of realising these – time spent in experimentation, training and building up the foundations of a project or enterprise. Assisting people through adult education and encouraging enterprises which are locally based and use renewable resources is time-consuming but eventually more effective. Long-term planning is particularly important for land management, where quick results are rare. This presents a challenge for government agencies which, restricted by their need to be immediately accountable and by their desire for quick, easily recognised results, often tend to support short-term solutions.

Current forms of land use for Aboriginal development

Current Aboriginal land uses and forms of management can contribute to development through providing opportunities for greater economic independence, and by creating a situation which supports social stability and cultural survival. The principal forms of land use currently practised on Aboriginal controlled lands are as follows:

- subsistence
- agriculture/horticulture
- pastoralism
- conservation and recreation (parks and tourism)
- living areas
- preservation of cultural heritage (sacred sites etc.)

These forms of land use have been described in detail in Young *et al* (1991). The present discussion is concerned only with highlighting common characteristics of these forms of land-use which have important implications for land management.

Multiple land uses

Aborigines often practise a number of these forms of land use within any one area of land under their control. Thus many people living on Aboriginal-owned pastoral stations also spend a significant part of the time harvesting resources for subsistence purposes. Cattle grazing can be partly combined with collecting bush tucker but more commonly, at least in the arid and semi-arid rangelands, it is those areas where grazing has ceased that are the most productive both for natural vegetable and game supplies. This calls for a different type of station management – perhaps reducing the size of the cattle herd, and deliberately excluding these animals from areas known to be valuable for bush tucker. Similarly, permanent Aboriginal communities have now been established in a growing number of national parks in remote regions. These draw their residents primarily from the traditional owners of that country. In these parks, of which the best known are Uluru and Kakadu, Aborigines safeguard their places of spiritual significance and also contribute their own detailed and unique insights into environmental conservation and understanding. This greatly enhances the effectiveness of the role of the park. But, since many individuals working in the parks service subscribe largely to the Yellowstone model of 'parks without resident people', this special contribution may not be recognised and adequate support may not be provided.

On the whole, government agencies find it difficult to deal with multiple land uses because they are each specifically charged with more limited roles. Figure 1 illustrates the problem. Land uses such as conservation, pastoralism and living areas are supported by different agencies: DASETT, CCNT and CALM; DPIE and State/Territory Primary Industry departments; and ATSIC, DEET and State/Territory Community Services departments. When they function separately, as in Figure 1A, those agencies are equipped to deal with them. However when they combine, as in Figure 1B, it is much harder for each agency to determine its particular responsibility and to co-ordinate its efforts in order to meet total needs. This latter situation is what commonly occurs through the multiple land use strategies carried out on Aboriginal-held land.

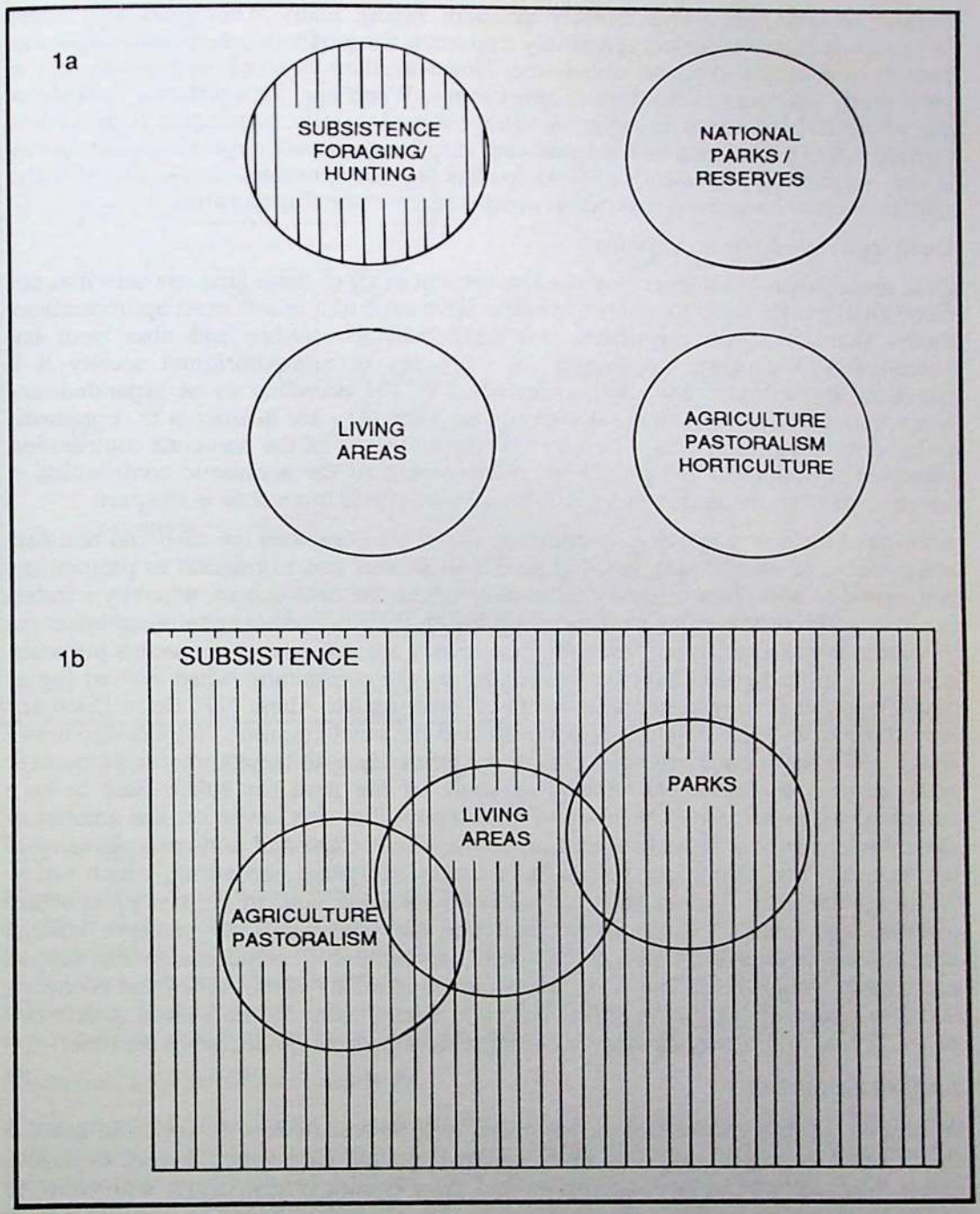


Figure 1: Aboriginal land uses: separation and integration

Figure 1A also illustrates another problem facing many Aboriginal land users. Subsistence is, for them, an extremely important form of land use which contributes both to economic and social well-being. However, there is no government agency as yet directly involved in supporting subsistence. When one considers that subsistence use of natural resources is arguably the most ecologically sustainable form of land management in Australia this is somewhat surprising. Recent development of interest in the commercial harvesting of feral species (eg goats, rabbits, donkeys) and native species such as kangaroos may focus greater attention on this question.

Cash and non-cash economies

Cash and non-cash elements may well be present in all of these land use activities and Aboriginal groups need to be able to select what kind of a mix is most appropriate for them. That mix will vary from one individual to another and also from one community to another. As Figure 2A suggests, in non-Aboriginal society it is common for cash and non-cash components of the economy to be separated, and hence support agencies can readily recognise what they are dealing with. Frequently little or no recognition would be given to the existence of the non-cash contribution. However nowadays, when people are more aware of the economic contribution of home workers (principally women), that may occur less often than in the past.

Aboriginal economic activity, in contrast, explicitly combines the cash and non-cash components, in various degrees. Figure 2B illustrates this in relation to pastoralism. Aboriginal pastoral land use may lie wholly within the cash sphere, whereby a station is run in ways very similar to those applying in their non-Aboriginal neighbours (eg Woorabinda in Queensland); or it may be wholly for subsistence, non-cash purposes, whereby a killer herd is kept for harvesting by the community when desired (eg on outstations); or it may contain elements of both (eg Mt Allan, NT; Doon Doon and Bow River in WA). This last approach is often the most common, but has also drawn fierce criticism. Support agencies concerned primarily with the commercial aspects of pastoralism consider the harvesting of some of the herd for subsistence to be a complete waste of resources, even if they know that this saves on the amount of money which people have to spend on buying food. Cash and non-cash elements of the economy can also occur within bush tucker and game harvesting, which can be partly commercial; fishing both for sale and for food; and in conservation, where tourism represents the cash component but the opportunity to preserve cultural heritage provides a non-cash contribution. Altogether it is necessary for support agencies to recognise the importance of both components of the Aboriginal economy, and also acknowledge that different Aboriginal land users combine these in different ways. Trying to fit every situation to a single development model is not sensible.

Lack of resources

Aboriginal people generally face a chronic lack of resources with which to practise their chosen forms of land use. They inherit degraded land which is very expensive either to rehabilitate or develop further and there is poor infrastructure with which to carry out development. This means that they almost invariably have to seek help from government agencies, and are caught in dependency relationships.

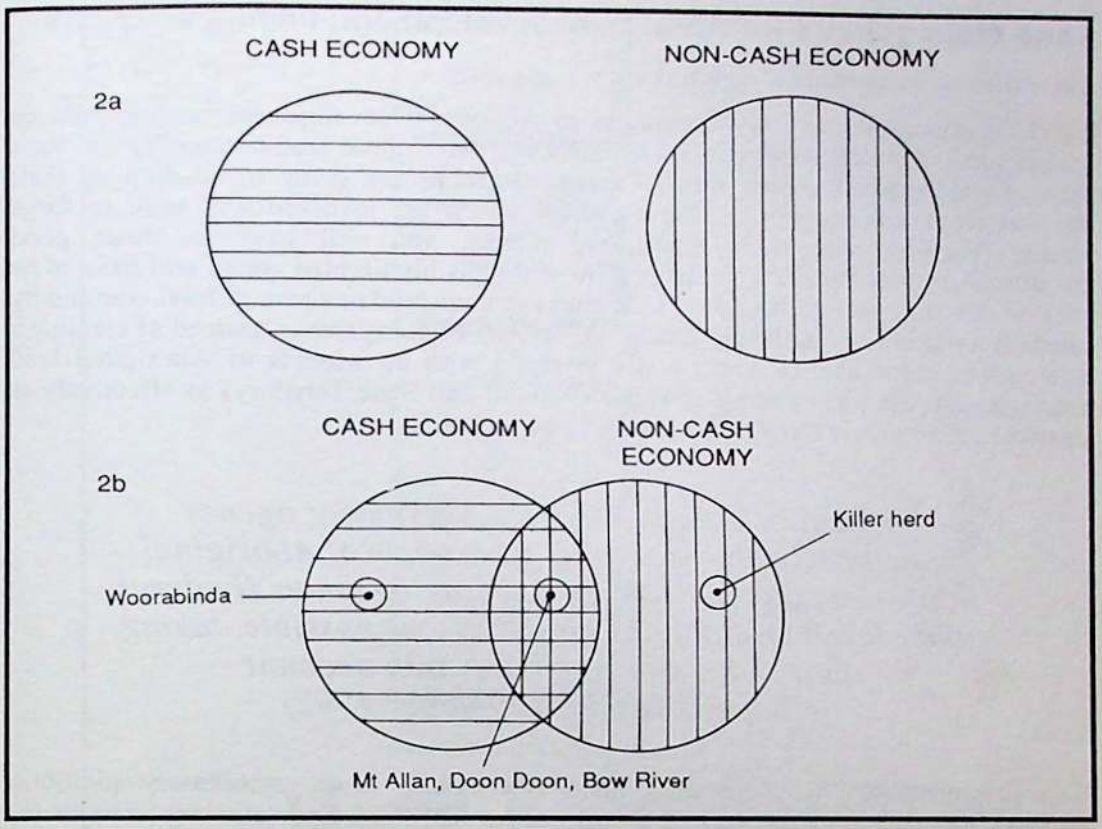


Figure 2: The Aboriginal economy: cash and non-cash components

Lack of skills

Aboriginal land users and managers also lack many of the relevant managerial and technical skills. Their experience has been restricted to the tasks carried out by the manual workers. This also forces them to seek assistance from government agencies so that they can gain the educational opportunities and experience which they need to fill the gap. In the interim they will also probably have to continue to rely on external expert advice, usually from non-Aboriginal managers, accountants and others.

Historical and political influences

Although all of these forms of land use appear to have been preferred by Aboriginal land-holders, they also represent the deep-seated effects of the socio-economic indoctrination to which Aborigines have been subjected for two centuries. Thus, although Aborigines have during the last two decades increasingly taken the initiative in adopting their own preferred combinations of land uses, many have significant barriers to overcome before they are sufficiently self-confident to make radical changes.

Land management for Aboriginal development: finding solutions

The roles of government agencies

Land management can only contribute to Aboriginal development through policies and programs which support the aspirations of Aboriginal land-holders. Given their lack of independent means most Aboriginal groups are going to be drawing their support from government. Those agencies which are involved will have to forge strong linkages with their Aboriginal clients, and will have to create good communication channels with them. The problems highlighted above will have to be tackled. Dealing with Aboriginal land management needs as part of total community needs is a particular challenge. One possible way of doing this is, instead of creating a new government agency specifically charged with all aspects of Aboriginal land management, use the existing agencies (Federal and State/Territory) as effectively as possible, taking their roles and attributes into account.

Instead of creating a new government agency specifically charged with all aspects of Aboriginal land management, use the existing agencies (Federal and State/Territory) as effectively as possible, taking their roles and attributes into account.
(Elspeth Young, 1 October 1992)

This is preferable because setting up a new agency is an unnecessary additional expense and also a waste of expertise already established. Specialist departments (eg DPIE, DPI, CALM, and ANCA, formerly ANPWS) have the technical know-how to deal with most land use and management demands. They need to become more aware that Aboriginal land-holders, like any other land-holders, will benefit from increased access to their expertise. However Aborigines will only be able to make use of their services if they are properly informed about their possibilities. Communication would have to improve in all sorts of ways. There are already signs that this is occurring, both through the efforts of these agencies and through the increasing technical understanding of many of the key Aboriginal bodies involved in land management, such as land councils.

ATSIC, the federal agency with specific responsibility for Aboriginal affairs, could assume a key role in this process, as the co-ordinator-in-chief. That department could forge and maintain the necessary links with other relevant government departments, and, through its regional councils, could act as the communication channel with Aboriginal land-holders. Regional councils, with many members who also perform key roles in Aboriginal organisations, could be well placed to pass information also to these important groups. This process would then link logically to the overall process of community development, for which ATSIC, with its role as a provider of services, is also principally responsible. Figure 3 illustrates where these linkages should occur.

In practical terms it seems as if, at present, it would be difficult to make this model work. Although ATSIC's role is theoretically broad-ranging the structure of the department itself is fragmented. Thus the first challenge is to co-ordinate its own efforts.

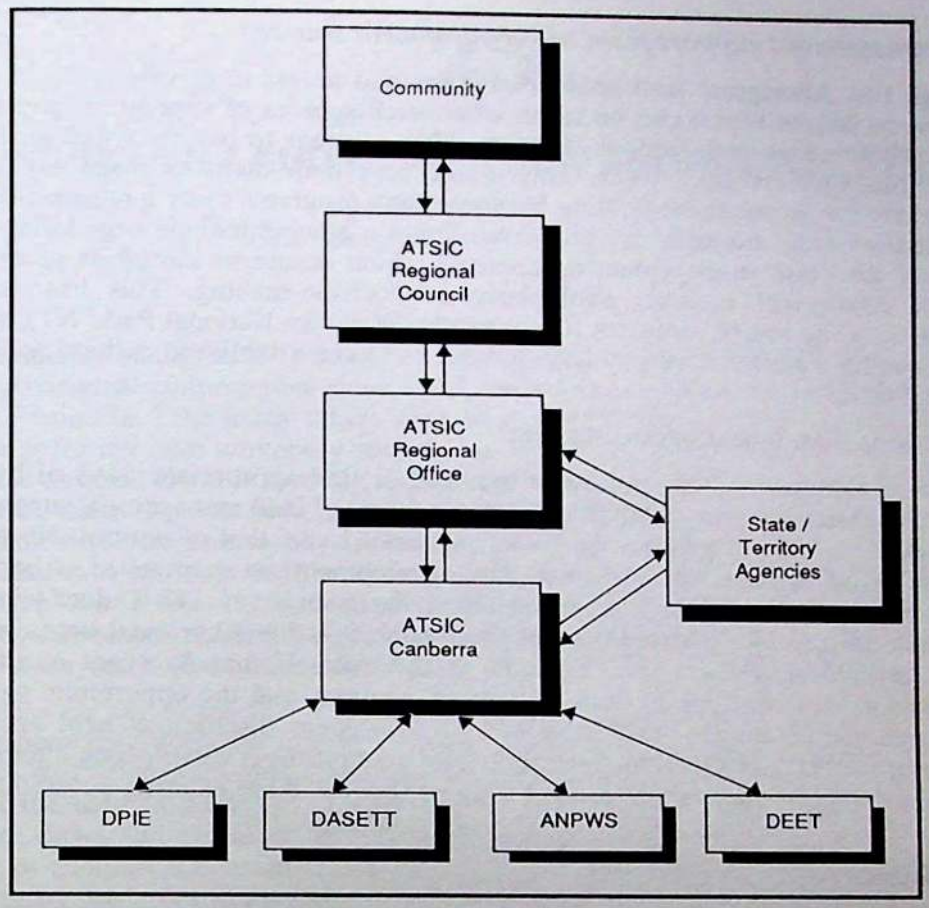


Figure 3: A communication channel linking Aboriginal community land management needs with government service agencies (from Young et al 1991)

Funding for land acquisition, for example, must also include funding for meeting the long-term management needs of that land, whether these lie primarily in the commercial sphere or whether they are mostly socially oriented. Discussion on these approaches are currently in progress. Further questions over making the model work stem from problems faced by regional councils. These are still in an embryonic form and in the process of establishing their methods of operation. During 1992 they have been coming to grips with planning, under regulations which require each council to produce a development plan. This process has proved difficult – collection of information from communities, analysis of that information and its use to formulate the plan has coincided with on-going problems of establishment and definition of roles. Resources, both human and financial, have also been limited. Hopefully many of these problems will become less severe. But in the meanwhile the potential for all regional councils being able to act effectively as part of ATSIC's co-ordination chain is uncertain.

Land management support from non-government sources

Although few Aboriginal land-holders have yet had access to private funding, there are some measures which can be taken when such sources of support are available. These include using cash from royalties or other earnings to pay for whatever forms of land management they want. This would also help them to make successful applications for government funding because many programs carry a requirement for substantial external financial contributions. Other measures include negotiating joint venturing and joint management agreements which ensure as strong as possible a level of Aboriginal control, particularly in decision-making. This has already occurred in some tourist ventures (for example, Watarrka National Park, NT), where Aborigines hold shares in resort development and have established cultural activities as part of this.

The Role of Aboriginal organisations

The above comments apply purely to the need to find appropriate ways of helping Aboriginal land managers to tap into whatever forms of land management support are available. They do not address the most important issue, that of control. No matter how the issue of land management and development is approached, Aboriginal control of the whole process is essential. Thus, for example, if ATSIC does take on a co-ordinating role like that outlined in the model, it is the Aboriginal organisations who must control the use that is made of that role. If that does not occur then development will continue to be a 'top-down' process, and the opportunity to bring about meaningful change will have been lost. Recent discussions held among a number of the NT and Western Australian land councils over establishing a joint land assessment facility under their control suggest that there are exciting possibilities in this area.

Conclusion

The prospects for establishing land management support systems along the lines suggested above are not at present entirely encouraging. However this is an important issue. Land management, both now and in the future, must form a vital part of the basis for Aboriginal development. It is therefore worth trying to find out how land management might best be supported within the development context.

Reference

Young EA, Ross H, Johnston J & Kesteven J, 1991. *Caring for Country: Aborigines and Land Management*, ANPWS/ATSIC, AGPS, Canberra.

Discussion:

Jamie Pittock: Should Aboriginal groups have to spend resources obtained from ATSIC on European-caused environment problems?

Unidentified speaker: I worry about a lot of communities which are made up of people 'really pulled in from different areas, brought in by the police troopers'. Their traditional lands are 'way back'. Many of these people really wanted to go back, and some of their children wanted to go back. Communities need to work with the bureaucracy.

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WORKING ON LAND ISSUES FOR ABORIGINAL PEOPLE

Peter Sutton, Consultant, Adelaide

My academic background is that of an anthropologist and linguist. I've been working with Aboriginal communities since 1969, mainly in the Northern Territory and Cape York Peninsula. Like many others with an academic background, I started off doing research for my own university studies, but it was not long before most of this work became directed towards meeting requests by Aboriginal groups and organisations. In my case, these requests have mostly been for land claims, sacred site surveys, impact assessments, local community government advice, and help with negotiations. The land claims or work on traditional ownership of existing Aboriginal land has been the biggest part of it and that is the kind of work I will talk about. I will talk in particular about the research needed for proving native title, because this is a subject in which there is currently a lot of interest since the *Mabo* decision of earlier this year.

People often say to me that it is the Aboriginal people, not anthropologists, who are the experts on Aboriginal culture and land relationships. That is true. But Aboriginal people still often want anthropologists to work for them. Why? One reason is that a lot of the laws in Australia require that Aboriginal culture or land relationships be written down and explained in advanced English, and presented in a European-style court or tribunal, where there is a land claim or similar action going on. While this may be unjust, it is still the case.

So there is a technical reason why anthropologists get employed: Australian law often demands that work of their skilled kind be done so that the government or the court can deal with writings, not just the spoken word, and so that the system of Aboriginal land relationships, not just the details, can be analysed and set out plainly for judges and others to understand. Courts also like to have expert witnesses to put forward or debate the interpretation of the evidence, to see how far the evidence of Aboriginal witnesses matches what the government law demands. Though some Aboriginal people are now qualified to do this work, most of it is still done by people like myself who have lived a long time with Aboriginal people and also have academic training.

One of the problems of the present time is that there do not seem to be very many well-qualified anthropologists available to work for Aboriginal groups. It is important that something be done about this. One approach might be for some of the bigger organisations such as the land councils to get together and work out a 'sweetheart' deal with a university, so that the organisations offer some on-the-job training and supervision and employment in exchange for some regular supply of academically trained people.

A lot of the research work I am talking about should be done only by people who are experienced and senior. This is because the things they report on for the Aboriginal

organisation are often very complicated and deserve the most sophisticated treatment when being analysed and presented. This is also because when there is conflict, like in a court case or land claim hearing, the arguments on behalf of the claimants have to be able to stand up to attacks from lawyers on the other side who might be representing large mining companies or the State or Territory government. The expert witness under attack should not only have a track record that makes them a believable witness, but they should also be as wise as serpents and as peaceful as doves.

But a lot of the anthropological research can also be done by more junior people, so long as they are supervised properly. To take one example: where people are attempting to defend native title and prove that someone else is trespassing or unlawfully trying to remove Aboriginal people from their land. A native title proof might involve getting together a large amount of information. This can be done by a team of workers, some who search through documents and simply put information onto a computer, or go out with maps and locate the sites that will be described in the proof, while more experienced people put the information together, interview the claimants in depth, and write up a draft of the statement so it can be checked by the claimants before the hearing begins.

The research on a native title proof would be pretty demanding, and I think it would have to cover at least seven areas:

- The history of Aboriginal *occupation* of the land, using both memories of older people and documents such as birth registers, mission cards, and government files.
- The nature of traditional Aboriginal *use* of the land, such as the way rights in plants, animals, water, timber and minerals have been allocated to members of particular families in the area.
- The system of *traditional connection* with the land, especially spiritual relationships, and how these relate specifically to local geography and the way groups hold responsibility for land in Aboriginal law; this means having good site information on maps.
- The extent to which these relationships to the land are *exclusive*, or involve *sharing* of resources, or sharing of the right to occupy the land.
- What kind of Aboriginal *group*, such as a clan, a camp or outstation, a cluster of camps, a community, a language group or 'tribe', a ritual group, and so on, might be the most appropriate group or set of groups seeking to prove native title.
- How people get membership of the groups, and how the groups' land interests keep going where families die out or move away permanently.
- What is the best way to define the *land area* for making such a proof of native title, having regard to the Aboriginal landscape not just the system of European titles laid over it.

The Cape York Land Council has asked me to begin writing about these things for a possible native title case in far north Queensland. The meaning of many of these words is not as clear as it appears on first thinking about them. For example, if people say that the land is shared by two groups, it is important to know whether the land is owned by one group and shared with members of the other group in day to day ways such as camping and hunting, or whether the two groups hold the land title in company and share the *right* to allow others to use it. Similarly, to say that people

have the right to occupy the land can mean that they hold the right to allow others to occupy it, or it can mean they have something like a licence to occupy it granted to them by the traditional owners, but this is a right they cannot pass on to others. In another case, the spiritual connection people have to land as members of groups is not the same as a spiritual connection one might have as an individual through conception, birth, or the burial of a parent; since the basis of native title is said to be communal, we need to think about whether or not individual spiritual connections can be part of a communal connection. These and similar questions cannot be answered just in theory, but need to be established on the basis of detailed research in each case. That is where the skills of anthropology can be very useful.

In the area of Aurukun we are fortunate in the fact that a large amount of the land there has already been mapped by several anthropologists over the last 23 years, and this information has been put together into a computer database with maps. There are about 2600 sites in the computer, covering over 100 clan countries. Family trees or genealogies have been written down for most of these clans, and their totems and ceremonies are recorded.

We have visited over half of the places listed in the computer database. We have photographed them, pinpointed them on air photos, tape recorded the older people talking about them, and made notes on their significance. Each entry for a site has information on its names, where it is located, which clans claim it, what food and other resources it has, what seasons it is used, whether it is a camping place or not, its spiritual or other cultural significance, and what historical events took place there. Often there are details on who camped and hunted, lived and died, on the land, and who their living descendants are.

For each entry there is also usually a listing of who gave the information, the date they gave it, and the notebook page numbers, film roll and shot numbers and tape track numbers where the original recordings were made. Although the hearsay rule would probably not be enforced for evidence in a native title case, we believe it is important to be able to say exactly whose words are being reported in the documents, and to be able to go back to their original statements if there is any argument about the truth of what is said.

I would like to emphasise the value of computers in this kind of work. They make it possible to put a large amount of information into order, to find details very quickly, and to make up smaller documents for particular purposes by editing parts of the database and printing them out separately. You can also make the secret parts of the information hidden inside the program so that only people with the right password can get access to them, and confidential or secret/sacred information can be printed out separately in restricted documents if this is necessary.

All of this technology and academic skill is very useful but it is nothing if the people using it also do not have the ability to connect with their Aboriginal employers at the human level.
(Peter Sutton, 1 October 1992)

All of this technology and academic skill is very useful but it is nothing if the people using it also do not have the ability to connect with their Aboriginal employers at the human level. Although the work in a court situation might look cold and hard, it has been my experience that the better judges who sit on tribunals do not think only about the law and the detailed intellectual arguments. They also have to make moral and political judgements, and they have to be a good judge of people, especially when the credibility of witnesses is important to a case. Good anthropological research is ideally a healthy mixture of technical skill and having one's heart in it.

Discussion:

In response to a question about rights to resources which might follow from the *Mabo* decision, **Peter Sutton** replied:

Few anthropologists have really thought much about land use in relation to these issues. It is likely that we have missed a lot of things we might have noticed. One thing I did notice in thinking back over 20 years of experience in Cape York was that people there do have a very different attitude to the consumption of the products of the land, like taking fruit from a tree or shooting a wallaby as you are going through an area. That is not a big deal usually, but if you go and dig things out of the ground, if you take away 50 spear handles from a place, and you are not the right people for that area, you can be in big trouble.

That is of a different order of intensity, of feeling and of traditional laws, prohibitions, taboos and so on. There are still prohibitions on travellers, not anyone can go anywhere. But if you are a bona fide traveller, if you are travelling through someone else's country and you have no real connection to it, can you take food off a tree? Well, most trees may be all right. Can you drink water from open water, for example from a lagoon? You bend down and you drink. That is not such a big deal. What if you dig a well? Now you are entering the earth, just like dreamings do. You are doing something, you are going in. Now big thunderstorms are often attributed to the wrong people digging wells, the wrong people digging yams, the wrong people taking out red ochre from under the mud on certain saltpans. I have never heard that said about simply eating fruit or shooting a wallaby on the road. People mark sugarbag trees. That is a resource that can be treated as an excess or a surplus that can be used for gifts and exchange too. And there is much more personal relationship there.

So things like quarrying and timbering, what you might call the extractive industries of Aboriginal tradition, are the very things where in coming up against European law and European thinking in this country, people have had the most opposition and it is not difficult in a sense to see why. There is competition in the case of mining in particular for extracting something that cannot be renewed and it is natural that that should be surrounded by very strong feelings and prohibition. In relation to the *Mabo* case, it is not clear at all to us whether it covers mining and lumbering and similar things, but I think we need to get the score on Aboriginal mining and lumbering very straight before going into court on such a thing.

There were questions on the method of proving possession and the need for documentary proof of occupation, and pleas for more acceptance of Aboriginal ways.

Peter Sutton: It seems to me that you should start with Aboriginal people. I know we are dealing with white law. I know we are dealing with a title that comes out of the white courts, but sooner or later, we have got to figure out that this is our country and the way we choose to put some of these things up has got to be done our way. It seems to me that the first and best way that you prove the ownership or connection to the land is the old one that applies to the Land Rights Act. It seems to me that where you start is with your songs and your stories, if you have your songs and your stories. You have not made them up yesterday. They belong to a long time ago and that is going to count.

But the High Court likes concrete evidence such as occupation and use. Now I think that is materialist and I think it is all wrong, but it seems to me that it is occupation, the right to occupy, and the right to use the resources which is over and over again repeated in the European law. They do not have a lot to say about spiritual connections. To emphasise the spiritual would be a challenge to the values of the system you were dealing with.

Many people also expressed concern about anthropologists and divulging information.

Peter Sutton: The other issue that I wanted to talk about is information. How much information does the court need, and I think it needs to consider that in light of the legislation this becomes important. The question about this information is who does it empower? Does it empower you, the experts? If made public, how much does it empower the government or the mining company? Whose is it? You ask questions about that, and we may not be able to answer. In some cases it becomes front-page stories in newspapers. So it is very dangerous.

This opened the discussion to a more general probing of the issue of professional ethics in dealing with Aboriginal communities.

Peter Sutton: One of the reasons that these issues and questions come up at every venue like this is that anthropologists clearly have a lot of power in this country and that is something people might want to think about also. It is a fact that anthropologists are dangerous or potentially useful, either way that makes them the subject of a certain amount of debate and emotion.

There is now a code of ethics which is held to by those who joined the Australian Anthropological Society and there are measures for getting into that. There are no punitive measures available. I wanted that to be in, as it is in the international body. But the anthropologists en masse would not agree to it. It took nearly ten years of debate. Anthropologists now have a code of ethics, but not all people who proclaim

themselves to be anthropologists either have training, or could get into the body that has a code of ethics, or would bother to follow its code of ethics if they did belong to it. I am afraid that there is nothing one can do about that.

Having in the past worked for government and given advice to some mining companies, I now no longer work for either government or mining companies except under very strict conditions for a federal body but 99% of the work that comes my way is from Aboriginal organisations. What happens very often (because no anthropologist of any reputation will work for a mining company, particularly in a situation of conflict or potential conflict) is that the companies will go to the bottom of the barrel: they employ people who are both unethical and very often quite incompetent as well. I think your best recourse there is to get them into the witness box over something, and that is where you can really test them out.

All I can say about divulging information is that it is awful if somebody does that, but the Australian law is on your side. I would prosecute anyone who divulges things that are given in confidence in that way if that is at all possible.

On getting your own anthropologist to meet a situation when you have not got the funding to do it, is one of the great inequalities. The government or a mining company has always got the money to employ the best lawyers as well. You are paying an expert $28 000 a year, and Lord Vestey's descendants say that they have got someone on $100 000 a year who says your expert is wrong, can you afford to be right? So if you are going to get into court or get into a negotiation, are you going to be able to buy the best person to help you?

Marcia Langton: It was said that they did not want any Aborigines in the Australian Anthropological Society. So apart from the prohibition of something covered under the Race and Discrimination Act, what is your view? Can you tell us what their views are now about Aboriginal membership?

Peter Sutton: No. I do not have a lot to do with them, I have not attended a meeting for some time. I do not find the views of the average university-bound anthropologist all that good on anything to do with Aboriginal people unless they have worked, and a lot of the people who attend the meetings work exclusively in other countries and have no sense of the politics or the realities of this country. Maybe that is why someone said that. I was not at the meeting you are talking about, so I do not know. I would be surprised if someone said it.

Marcia responded: Well that is why I am not a member of the AAS and I do not aspire to be. Now that seems to me as though the problem is the relationship between the anthropologists who are employed by Aboriginal organisations and Aboriginal people themselves. It is important that people that have worked for Aboriginal organisations like yourself, can say: 'Well, not only am I a member of AAS, I also subscribe to a code of ethics brought down by Aboriginal organisations.'

Peter Sutton: All Aboriginal organisations that I deal with have developed, or are thinking about developing, very detailed contracts which cover ethical issues.

Unidentified questioner: You are on one hand saying anthropologists are no good, on the other hand saying they are necessary.

Peter Sutton: What are unacceptable people? Is your doctor nice? I do not know. Mine is all right. But if he was a bastard, but still did the right thing and fixed my leg up, then I would go back. And I suppose that is what I mean. Good lawyers are bad, aren't they? If you want a prosecutor who is a good one, they have all got blood on their teeth. So who wants a perfect world? That might be like Disneyland, which is awful.

Josie Crawshaw: I think the point of this is about Aboriginal people feeling powerless about what is happening in their lives, and having to almost delegate that power to someone else, who then becomes very powerful and can use that kind of information in all sorts of ways, for their own ends.

Toni Bauman: The onus to prove should be on the government. Many Aboriginal people think that the onus to prove should not be on indigenous people at all. The onus to prove should be on the state to say this is not your land: not the indigenous people having to prove why it is theirs, they know why it is theirs. But that kind of talking really worries me, and I think it is important to get back to talking about power and *Mabo* and proving in that way.

Garth Nettheim: Justice Toohey referred to a notion that a Canadian scholar called Kent McNeill developed which works not in terms of British law leaving room for Aboriginal law, but also works right within British law itself: if people are in occupation of land, they are presumed to have legal possession and there is a further presumption that that legal possession is freehold title, unless someone else can show a better title. Justice Toohey eventually said it does not make much difference; but on the question of who has to prove what, I think it is very important.

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FUNDING FOR ABORIGINAL LAND MANAGEMENT A NEGLECTED POLICY ISSUE

Helen Ross, Centre for Resource and Environmental Studies, Australian National University

The issue of management of Aboriginal lands has slipped through both the Aboriginal policy and the environmental and land management policy 'nets'. In the Whitlam era, when the fundamentals of current Aboriginal policy were set, no one really looked beyond the achievement of land rights to realise the range of maintenance responsibilities which would come with land ownership. The financing of land-based enterprises was anticipated, but the control of soil erosion, weeds and feral animals was not. This was well before the Landcare revolution of the late 1980s, in which the extent of land degradation became recognised nationally and the Commonwealth and States established new programs to encourage land-holders to manage their land more sustainably.

National policy and long-standing legislation assume that *landholders* have the *primary responsibility* to maintain their lands. Governments may help land-holders to meet this responsibility, through advice and sometimes subsidies, but they will not take over the responsibility. To do so would contradict legislation requiring farmers to control weeds and maintain pastoral leases to a certain standard. It would also enable farmers to profit at government expense, because good land management improves the long-term productivity of the land.

In the past, advice to farmers has been provided through the States' soil conservation 'extension services', and subsidies through taxation deductions and some State programs to provide half the cost of controlling weeds. More recently, the National Soil Conservation Program has been broadened to educate land-holders through a community development, group-based approach, and other Commonwealth programs have been added to conserve endangered vegetation, encourage tree planting and maintain our biological heritage.

Aboriginal lands, which now make up 13.1 per cent of Australia (Commonwealth of Australia 1991), do not fit well into this system (Young *et al* 1991). Very few Aboriginal owners have the financial base even to contribute a proportion of the funds necessary to carry out a land restoration or conservation project. Very few of the lands support revenue-producing enterprises, though many are used for subsistence (producing 'real' rather than cash incomes for Aboriginal residents). The land degradation problems on the majority of Aboriginal lands do not necessarily fit the priorities of the Commonwealth's land management funding programs, because they were not farmed intensively in the past (cattle leases excepted!). Aboriginal land-holders seldom have good social contact with their non-Aboriginal neighbours,

which makes it hard for them to join the cooperative groups necessary for the National Soil Conservation Program (Landcare groups) and Murray Darling Basin Commission Natural Resource Management Strategy (Communities of Common Concern). In addition, the mainstream Commonwealth programs have not been well promoted to Aboriginal groups, and Aboriginal interests have only recently become represented on the panels which assess grant applications from each State.

An interdepartmental funding impasse has arisen over the management of Aboriginal lands. ATSIC (and previously DAA) has expected Aboriginal owners to turn to mainstream programs for support, not realising that their programmed projects could only be supported in part, if at all. The mainstream programs, meanwhile, overlooked the Aboriginal clientele, assuming that ATSIC was responsible for all matters Aboriginal.

ATSIC (and previously DAA) has expected Aboriginal owners to turn to mainstream programs for support, not realising that their programmed projects could only be supported in part, if at all. The mainstream programs, meanwhile, overlooked the Aboriginal clientele, assuming that ATSIC was responsible for all matters Aboriginal. (Helen Ross, 1 October 1992)

This way in which Aboriginal land management activities can fall between assistance programs is illustrated by the case of the rampant weed *Mimosa pigra* in the Top End of the Northern Territory. This weed invades open floodplains and billabongs, particularly where feral buffalo or fires have removed the previous vegetation. It forms a dense tall shrubland, which crowds out native tree seedlings. It threatens to spread from Arnhem Land, Wagait and Daly River into Kakadu National Park, and potentially across the north of Australia. CSIRO researchers are looking for a biological control agent, but in the meantime control of the weed's spread is urgent. This has been attempted with chemical spraying, and knocking it down with chains dragged between two tractors (Young *et al* 1991, 30). These control methods are expensive, and because the weed spreads so rapidly, the costs escalate each year. The Northern Territory government has a scheme to pay half of weed control costs, but no one has accepted responsibility to meet the half required of the Aboriginal land-holders. For several years the Ministers for Environment, Primary Industry and Energy, and Aboriginal Affairs have been negotiating over who should pay. Interim funds have been provided on a year-to-year basis, but no organisation has accepted the ongoing responsibility in principle. $2 million was provided in 1991–92, but owing to an oversight no funds were programmed for 1992–93! The work accomplished in the last year is thus threatened.

Although ATSIC denies explicit responsibility for most aspects of Aboriginal land management (other than enterprises), our research (Young *et al* 1991; Dale 1991, Davies 1991) shows that ATSIC is unwittingly the main funder of Aboriginal land

management activities. A few organisations have managed to undertake land management activities under their ATSIC funded staff establishment and office overheads, and a few resource agencies specifically devoted to land management (such as those in WA negotiating for joint management of State national parks) have obtained short-term funding from ATSIC. A great deal of activity has taken place under employment and CDEP schemes. ATSIC is party to the inter-departmental Aboriginal Employment Development Program, which runs two programs relevant to Aboriginal land management. In addition, ATSIC retains direct ownership of lands purchased by the former ADC, and may not be aware that it, rather than the community to which the lands are leased, is responsible for the care of that land. The Decade of Landcare Plan lists ATSIC initiatives under the 'Public Land Program', and includes the following under its action plan:

> Options available to improve the capacity of Aboriginal communities to manage land degradation will be considered in the light of the report by the Australian National University Centre for Resource and Environmental Studies* to the Aboriginal and Torres Strait Islander Commission (Commonwealth of Australia 1991, 34)

The report has been in circulation for a year, yet this consideration has not, to our knowledge, begun.

The funding picture

The main sources of funding available for land management are summarised in Table 1. Taxation deductions, State and Territory extension services and research programs are also relevant to the financing of land management.

Mainstream programs, the National Soil Conservation Program, One Billion Trees, Save the Bush and the Murray Darling Basin Commission program, now operate under a One-stop Shop. This means that applicants fill out a single application, and the program staff decide among themselves which programs are most appropriate to fund it. In coming years, it is likely that these programs will become progressively more integrated, and their requirements standardised.

Our report *Caring for Country* (Young *et al* 1991) identified a series of reasons why Aboriginal access to these programs has been limited:

- **program priorities**
  The programs were originally designed for the intensively cultivated areas where land degradation and destruction of vegetation are worst. Aboriginal people own little land in these regions. The problems occurring on Aboriginal land are sometimes different.
- **eligibility of Aboriginal groups**
  Two programs, the National Soil Conservation Program (NSCP) and Murray Darling Basin Natural Resource Management Strategy (MDBC) work through community groups which are supposed to include all people with an interest in an area of land. Although the aim is worthwhile, it is more difficult for Aboriginal people to form or join such groups. The programs now make allowances for this.

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* Report was by CRES and the Department of Geography and Oceanography, Australian Defence Forces Academy, and was presented to ATSIC through the Australian National Parks and Wildlife Service, who commissioned and supervised the study through ATSIC's AEDP research funding.

Table 1: Mainstream and Aboriginal land management funding programs

Program	Purpose and details
MAINSTREAM	
National Soil Conservation Program (NSCP)	Soil conservation focused on agricultural and pastoral areas. Awareness and community cooperation towards sustainable land use. Supports landcare groups and funds demonstration projects, not remedial measures in general.
One Billion Trees (Greening Australia)	Awareness and community action to increase tree and associated vegetation cover.
Save the Bush (DASETT)	Preservation of remnant native vegetation outside national parks and conservation areas.
Murray–Darling Basin Natural Resource Management Strategy Program	Control and repair of natural resource degradation in the basin, heritage preservation, appropriate planning, community action.
National Estates Grants Program (Australian Heritage Commission)	Preservation of National Estate values: natural environments, Aboriginal, historical.
National Rainforest Conservation Program (DASETT)	Preservation of rainforest.
Local Government Development Program: Environmental Management (DILGEA)	To increase the role of local government in conserving the environment. Some Aboriginal organisations qualify as local governments.
ABORIGINAL	
Contract Employment Program for Aboriginals in Natural and Cultural Resource Management (CEPANCRM ANPWS)	AEDP program to promote long-term Aboriginal employment in nature conservation. Seed funding to State agencies to contract out work to Aboriginal people.
Feral animals, noxious plants and game meat industry program (BRR)	AEDP program to promote work for people controlling feral animals and weeds, and harvesting animals for sale.

- **eligibility of Aboriginal proposals**
  Projects designed to suit Aboriginal circumstances sometimes do not match the expectations and selection criteria of a funding program. Some Aboriginal organisations have negotiated their way through this barrier, and the programs have been made more flexible to accommodate the precedents they set. Better communication between program staff and Aboriginal organisations has helped.

- **contributions required**
  Four of the mainstream programs expect each applicant to meet some of the cost to demonstrate their commitment to the proposal and because they may become more profitable as a result of the project. This is exceptionally difficult for Aboriginal groups, which seldom have cash. They may count staff time and office overheads, but there are only a few Aboriginal organisations with land management branches.

- **promotion of programs**
  Publicity about these programs is distributed through non-Aboriginal networks, newspaper advertisements, or mailing lists which have poor coverage of Aboriginal interest groups. The literature is often in a form which Aboriginal groups find hard to understand.

- **program decision-making procedures**
  Several of the programs use State committees to assess applications and set priorities. They have only recently included Aboriginal representation.

Northern Territory Aboriginal organisations have been the most successful in obtaining funding through these programs. They have the most land, have had land for long enough to need to consider land management, and have started specialist branches to concentrate on it. These staff can prepare and follow through project applications, and their staff and office overheads can often be counted as their contribution to the cost of the project. Aboriginal organisations in the States are still preoccupied with gaining land ownership, and few have the means of funding staff who can design and carry out land management projects.

The two special Aboriginal programs run under the Aboriginal Employment Development Program (AEDP) by the Bureau of Rural Resources (BRR) and Australian Nature Conservation Agency (ANCA) [formerly ANPWS] are very accessible, but their purposes are very specific. They are designed to produce *employment or income*, and cannot be used to address all land management problems.

The BRR program is restricted to feral animals and weeds, and the ANCA program to conservation projects in association with State authorities (which are expected to take over funding later).

The advisory 'extension services' provided by the State and Territory governments concentrate on land in primary production, not the former reserve lands which were saved from pastoralism and cultivation. Aboriginal pastoral properties are making more use of this support network, especially in the Kimberley and parts of the NT. (The former Aboriginal Development Commission provided advice instead, through consultants.) Aboriginal landowners sometimes need to take the initiative to benefit from extension services, but some have received extra help when they have.

It is important that Aboriginal owners keep in contact with the extension services, as they are a good form of publicity about funding programs.

Research programs are also an important source of assistance relevant to land management, but it is difficult for Aboriginal owners to use these directly. Some are run entirely by government organisations, and do not give out grants. Those which give out grants are designed for academically qualified researchers. Aboriginal people could consider asking qualified researchers to work on their behalf, perhaps collaborating so that Aboriginal people can participate in aspects of the research and contribute their cultural and local knowledge (Young *et al* 1991, 91–92).

Although there may appear to be many land management funding programs, the reality is that it is extremely difficult for Aboriginal owners to pay for the management of their lands. The situation is illustrated in Figure 1. Many parts of the jigsaw are missing, and it takes Aboriginal organisations a great deal of ingenuity to put each project together. In the absence of staff to organise land management in most parts of the country, many land management needs remain unrecognised or neglected.

The greatest deficiency is that there are no obvious sources of funds for the organisational side of Aboriginal land management. Without staff to contribute expertise, time and effort, projects cannot be carried out at all. If there is someone to plan and supervise a project, their costs can often be counted as the Aboriginal organisation's contribution to qualify for funding from a mainstream funding program.

Secondly, only fragments of the funds necessary to carry out projects are available. The mainstream and AEDP programs do not cover all types of land management activity, over all types of land. For instance, conservation activities are mainly funded over national parks and conservation areas, not Aboriginal lands. Education and awareness can be funded, but not the actual work of improving land condition. Aboriginal groups may supply their labour-costs through CDEP, but still need capital costs for many types of projects necessary to address land degradation.

Conclusions

Aboriginal land management has to be recognised on the Commonwealth, State and Aboriginal policy and funding agendas. Its neglect is an anomaly in Commonwealth funding. Aboriginal lands amount to 13.1% of the continent, too large an amount to be left without environmental management.

Land management is an integral part of regional and community planning. Aboriginal people are not the sole beneficiaries of the management of this land. Neighbours benefit or lose from the quality of land and water management, especially where erosion, salinity, feral animals or weeds are concerned. Some of the previous reserve lands have conservation potential, because their vegetation and animal life have not been transformed by farming or pastoralism. Aboriginal owners of these lands could perhaps be contracted to help fulfil Australia's international agreements to maintain biodiversity.

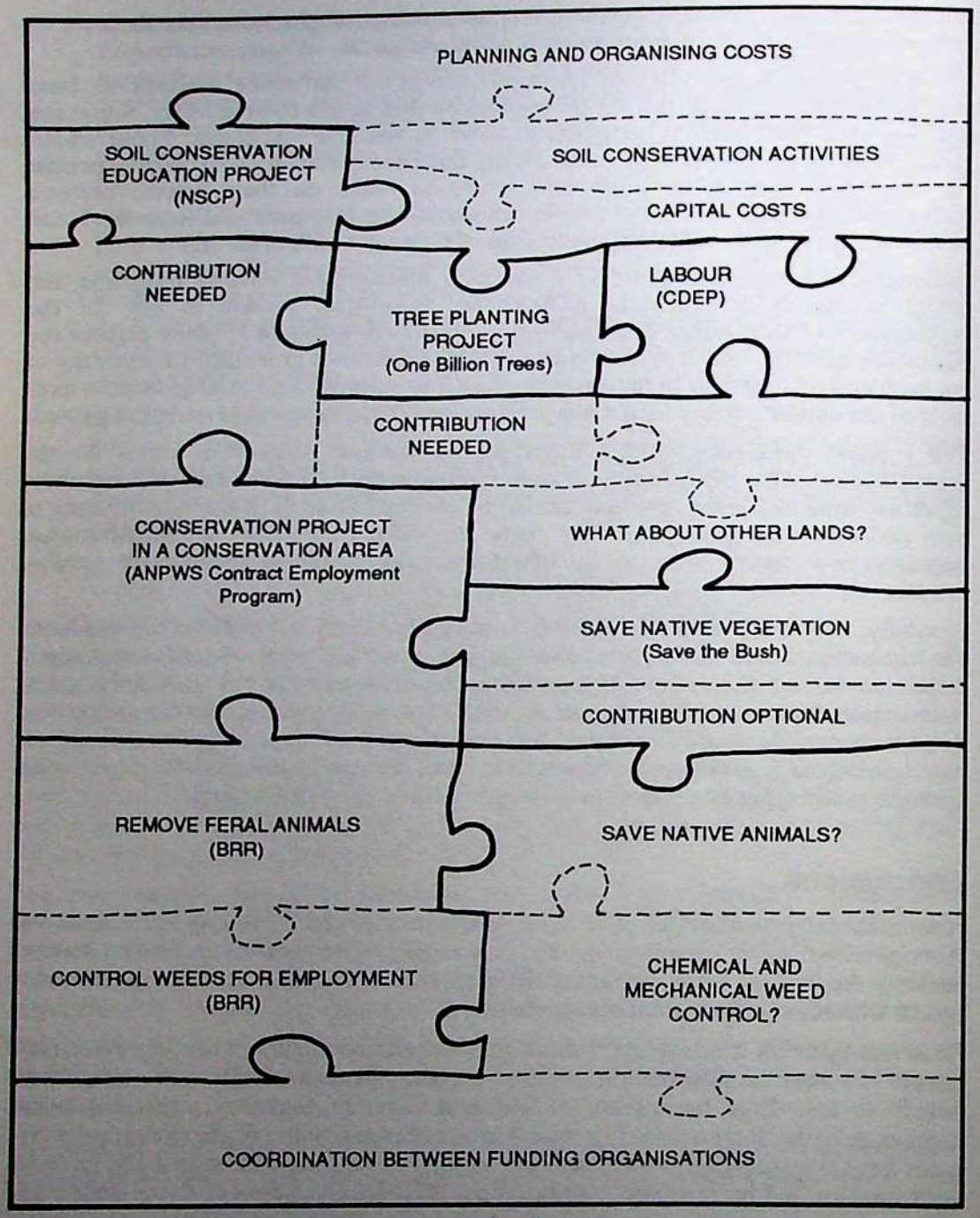


Figure 1: The funding jigsaw

The 'mainstream' Commonwealth land management programs are becoming more flexible and accessible, but will never be able to meet many of the needs on Aboriginal lands. They are designed to encourage good land management practice, not to carry it out. They have specific purposes, which only partially coincide with the management needs identified on Aboriginal lands:

- education and demonstration projects are supported, but not the wholesale correction of land degradation
- soil and vegetation conservation are assisted, but not animal or weed control
- specific activities may be funded, but not the organisational overheads needed to start and run them.

The extension services provided by the States are mainly advisory. They have a long way to go to include Aboriginal landowners equitably in their services, partly for communication reasons and partly because their priorities are towards pastoral and agricultural lands. Meanwhile, the Central and Northern Land Councils and Pitjantjatjara Council provide an equivalent service to NT and SA areas at Aboriginal expense.

Research programs are not particularly accessible to Aboriginal groups, though we have identified ways in which Aboriginal organisations could commission research through these programs (Young *et al* 1991, 91).

The two Aboriginal employment programs directed towards specific land management purposes fulfil useful roles. They are not designed or able, however, to address the broader agenda of land management needs. ATSIC's Land Acquisition Program has been increased and renamed to incorporate the term 'management', but the issue of diverting some of the funds from purchases to ongoing management is still under discussion.

The question remains, how can the full range of Aboriginal responsibilities and desires in land management be funded? ATSIC, having taken the running in land rights legislation and negotiations and land purchases, surely has a moral responsibility not to abandon Aboriginal owners with responsibilities they cannot fulfil. Other Commonwealth and State departments also surely have a responsibility to target Aboriginal as well as non-Aboriginal owners under their programs, and to overcome the unintended barriers to Aboriginal participation. They also need to broaden their activities to reflect new commitments to maintaining biodiversity and achieving sustainable development; this could incorporate some of the Aboriginal priorities which have been hard to meet under the programs' current forms.

It would not be practicable for ATSIC to undertake to fund all management requirements on Aboriginal land. It could never afford to do so, and mainstream departments could easily refer all Aboriginal applicants directly to ATSIC.

In the 1970s, inter-organisational arguments over the policy and financial responsibilities for Aboriginal health, education, housing and employment were resolved (more or less) in ways which shared responsibilities between the Commonwealth and States, and between DAA and the specialist Commonwealth departments. Thus DAA had sections to handle each sectoral issue, while Aboriginal Health, Aboriginal Education and Aboriginal Employment Branches were also set up

in the functional departments. Coordination mechanisms were established, and funding responsibilities shared out. This paper argues that similar coordination and financial arrangements need to be made between the Commonwealth and State departments involved in Aboriginal Affairs and land management.

Having identified the needs (Young *et al* 1991) ATSIC could:

- coordinate negotiations among Commonwealth and State departments, to ensure that needs are met from a variety of sources, and programs are amended or extended where necessary to overcome the unintended barriers to Aboriginal access;
- extend its own programs and supply limited new ones to enable Aboriginal applicants to qualify for assistance under the mainstream programs, and fill any gaps remaining between other programs. For instance it could extend its support for administrative positions and running costs in Aboriginal organisations (such as resource agencies and some land councils) to environmental management positions.

ATSIC is the most appropriate organisation to open these discussions, as no other department currently recognises Aboriginal land management as a sufficient priority to wish to resolve the problems. It will find common ground, however, with the departments concerned with conservation and land degradation, and those such as the Department of Prime Minister and Cabinet which undertake a more general coordinating role in matters such as Reconciliation and Ecologically Sustainable Development.

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References

Commonwealth of Australia, 1991. *Decade of Landcare Plan: Commonwealth Component*, AGPS, Canberra.

Dale A, 1991. *Aboriginal Access to Land Management Funding and Services: Case Studies: Kowanyama, Aurukun, Woorabinda and Trelawney*, Griffith University, Nathan, Qld.

Davies J, 1991. *Aboriginal Access to Funds and Services for Land Management: Case Studies: West Coast and Eyre Peninsula, South Australia*, Australian Defence Force Academy (UNSW), Canberra.

Young E, Ross H, Johnson J & Kesteven J, 1991. *Caring for Country: Aborigines and Land Management*, ANPWS, Canberra.

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THE IMPACT OF ROYALTY PAYMENTS ON ABORIGINAL COMMUNITIES IN THE NORTHERN TERRITORY

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Introduction

I have been asked to present a short paper on the impact of mining royalties and other mining-related payments on Northern Territory Aboriginal communities. In doing so I will use the Central Australian experience with which I am most familiar as case study material, but I want also to refer to the wider context of royalty payments in the Northern Territory and to raise issues that have Territory-wide implications.

The importance of royalties

The payment of royalties is fundamental to the whole purpose of granting land rights. That is, if Aborigines did not have the right to receive royalty payments from mining and other activities on their land, they would not have true land rights at all. Mr Justice Woodward, who advised the Commonwealth Government in the early 1970s on the form that Northern Territory land rights legislation should take, identified the provision of land for a people who are economically depressed as one of the main reasons for granting land rights. But because the Land Rights Act made Aboriginal land in the Northern Territory inalienable and so unable to be sold, Aboriginal land has very limited economic value. The right to receive royalties is therefore absolutely fundamental, as was recognised by Woodward and as is now reflected in the Act.

It follows that if the future socio-economic and political status of Aboriginal people in the Northern Territory is to change for the better, royalties are definitely the most important means available to them to effect such change. To put it simply, most Aboriginal people in the Northern Territory are poor, and royalty money provides an opportunity for something to be done to reduce that poverty and to give them greater power. In our capitalist system money is power, and economic and political status go hand in hand. The ultimate goal that Aboriginal people may achieve through the application of royalty moneys will be that their communities and families can enjoy an improved quality of life (whatever that may involve for them), quality of life being the ultimate issue of economic and political status.

The impact of royalty payments

I have said that royalty moneys have great potential to improve the economic status of Aboriginal people. The consultant Shann Turnbull, appointed by the Department of Aboriginal Affairs (DAA) at the time of the passage of the Land Rights Act to report on the likely impact of mining royalties on Aboriginal communities in the Northern Territory, predicted that royalties could make all Aborigines in the NT economically

self-sufficient within 20 years: that is, by the year 2000. Though this prediction now appears to be a pipedream, the potential economic impact of royalties could nevertheless be immense. But Turnbull also predicted that 'the substantial discretionary revenues that would accrue to Aboriginal people could seriously jeopardise their traditional life without the checks and balances of accountability'. That is to say that the payment of royalties does not necessarily always benefit Aboriginal people. Indeed, just as it is very possible that mining itself can have a damaging effect on Aboriginal society and on Aboriginal land, so it is also quite possible that far from bringing benefits, the payment of money to Aborigines by way of compensation for that damage will itself have a damaging impact.

As an example of this we could mention the 1984 Report on the Social Impact of Uranium Mining on the Aborigines of the Northern Territory – a study undertaken by the Australian Institute of Aboriginal Studies (AIAS). This study found that a great deal of quarrelling and bad feeling had been created and that as a direct result of mining payments the Aborigines of the 'Uranium Province' of Western Arnhem Land constituted a society in crisis, characterised by 'disunity, neurosis, a sense of struggle, drinking, stress and hostility'. This was essentially because there were no proper royalty structures in place and mining-derived money was being distributed in an ad hoc manner with no policy or purpose.

This finding suggests that there must be appropriate structures in place to handle royalty moneys. By 'structures' I mean Aboriginal-controlled organisations which have in place guidelines and policies which maintain a balance between consumption and investment, between spending and saving, between distribution and accumulation. It is imperative that this balance be maintained and also that there be clear guidelines relating to both distribution and investment.

The two types of royalties

Mining royalty payments in the Northern Territory fall into two broad categories. The first is negotiated payments (also variously known as 'agreement moneys', 'private royalties' or in Central Australia 'traditional owner royalties'). These payments are negotiated between the Land Councils and the mining companies and are paid by the companies to the traditional owners, usually through the Land Councils. The amounts, terms and conditions of these payments are set out in the various agreements and they vary widely from one agreement to another, since they are the outcomes of negotiations.

The second category of royalties are statutory royalties – also referred to as 'government royalties' or, more properly, 'royalty equivalent payments'. Under the terms of the Land Rights Act the Commonwealth government pays to Aboriginal people through the Aborigines Benefits Trust Account (ABTA) amounts equal to all royalties actually paid to government (whether to the Northern Territory government or to the Commonwealth) in relation to mining activity on Aboriginal land.

You might well ask why the royalties are paid to government in the first place instead of directly to the Aboriginal landowners. The answer, of course, is that the Aboriginal people own the land but they do not own the minerals under the land. Under the Land Rights Act the government owns the minerals and so the mining companies pay royalties to the government (uranium royalties to the Commonwealth and bauxite, gold, oil, gas, manganese and so on royalties to the Territory). The Commonwealth

government then pays matching amounts to the ABTA, which are distributed according to a formula laid down in the Land Rights Act: 40% to the Land Councils for their administration costs, 30% retained by the ABTA for grants for the benefit of all Territory Aborigines, and 30% to the relevant Land Council to pass on to royalty associations representing the communities and groups affected by the mining operation. At least this is how it is supposed to work. In practice, the two main land councils have dipped into the ABTA's 30% to top up their administration costs.

This paper is concerned with both types of royalties, but particularly with the statutory royalties. There is a greater 'public' interest in moneys sourced from Consolidated Revenue, and also because the organisation that I am employed by, the Ngurratjuta Association, is an association of the communities and groups living in the area affected by the oil and gas mining operations at Mereenie and Palm Valley. As such, Ngurratjuta receives 30% of the Mereenie and Palm Valley statutory royalty equivalents that are paid for the benefit of the affected communities.

The Mereenie/Palm Valley royalty structures

Statutory royalties

As I have already outlined, only 30% of statutory royalty equivalent payments goes to the Aboriginal communities affected. The rest goes to the Land Councils and to the ABTA for general grants. In relation to the Mereenie and Palm Valley mining operations the Ngurratjuta Association was set up by the Central Land Council in 1985 to handle the 30% affected-community money. This was done after extensive consultation with the communities involved.

The Mereenie affected area was very broadly defined by the Land Council – mainly because it could not be said that any particular community or group is directly affected by the mining operation. Oil and gas 'mines' create far less environmental disturbance and involve far fewer mine workers than do the mines at Groote, Gove and Jabiru. They are really just a series of pipes sucking oil and gas out of the ground, a few storage tanks and small buildings, with perhaps half a dozen workers. Palm Valley is located quite close to the Hermannsburg Aboriginal community. Mereenie is a fair way from any settlement. It needs to be said that although there is really no basis for compensation payments to Aboriginal communities because disruption is minimal, the fact remains that both operations are on Aboriginal land and Aboriginal people have an obvious right to share in any wealth derived from mining on their land.

The Mereenie affected area stretches from Papunya in the north to Kings Canyon in the south, and from Jay Creek in the east to Ilpili (a Papunya outstation) in the west. The Palm Valley affected area is much smaller, being just Hermannsburg and the outstations serviced by the Tjuwanpa Resource Centre at Hermannsburg. The Association has about 70 member communities, most of which are outstations, representing some 1500 people. There are 13 people on the committee.

The Central Land Council, in setting Ngurratjuta up, drafted a constitution that provided for community purposes expenditure only, with no payments to be made to individuals. It took this approach because it was paying the entire amount of the negotiated payments direct to traditional owners as cash payments, and wanted to ensure that at least the statutory royalties were spent on community purposes.

The problem with this approach was that there was no provision for capital accumulation, that is for investment. Therefore the management committee of Ngurratjuta decided very soon after the Association had been incorporated to put in place a firm policy whereby 50% of all royalty income (after the deduction of management expenses) would be put towards long-term investment, and the other 50% would be paid on a per capita basis into community and outstation trust accounts held by the Association, these moneys to be used for community purposes. This balance between investment and consumption has been maintained consistently for the past seven years and appears to have gained general acceptance.

The Ngurratjuta Association has made the following investments:

- purchase of a large block of flats in Alice Springs
- purchase of other residential property in Alice Springs (used by staff associated with Ngurratjuta activities)
- establishment of Ngurratjuta Air, a small airline servicing the communities west of Alice Springs (it currently has three aircraft)
- construction, in partnership with two other Aboriginal airlines, of an aircraft hangar and maintenance operation at Alice Springs airport
- investment in shares, mortgage trusts and unit trusts
- purchase of fine art, particularly Albert Namatjira originals. Ngurratjuta's collection is the major Namatjira collection in Alice Springs and an important tourist attraction at the Araluen Art Centre where it is housed
- purchase of a large commercial property, where the Association's office is located
- acquisition of a minor equity position in the new (predominantly Aboriginal owned) Wilderness Lodge at Kings Canyon
- establishment, with 7% ownership, of Yarringka Air, a helicopter scenic flight company operating at Kings Canyon, with expansion proposed.

Although all this is fairly humble compared with the investment holdings of, say, the Gagudju Association in the Alligator Rivers Region, it represents a solid commitment to the goal of changing the structural position of the Association's membership in the political economy of Central Australia. It also makes it more likely that the Western Arrente and Luritja people who constitute Ngurratjuta's membership will have something to fall back on when the royalties run out, or when economic times get really hard.

It should not be thought that Ngurratjuta has received a lot of money. When the world oil price collapsed in 1986 the Association's Mereenie income fell from about $1 million in 1985/86 to about $100 000 in 1986/87. Mereenie income has continued to be both very low and very erratic. Palm Valley income is far more reliable, but it is not large, current income levels being only about $500 000 per annum. Ngurratjuta's income is far lower than that of the major Top End royalty associations or that of the Granites gold mine royalty association, and I believe it has done well to achieve the investment profile that it has. I must point out, however, that several investments have been made with funding assistance from ABTA or from ADC/ATSIC. Royalty associations can use royalty money to attract other funding if they indicate that they are prepared to put their own 'hurt' money into a proposed business investment. I am also a believer in what I call the loaves and fishes principle – that careful investment

can mean that much can be achieved, and many people can ultimately be 'fed' with relatively little.

The Ngurratjuta Association has evolved into a resource organisation with a broader role than just royalty trust account management and investment. It also operates an accounting service, an outstations resource centre, and provides active support to various community-based enterprises operating within the Ngurratjuta area, eg Kurkara Tours at Kings Canyon and the tourism venture at Ipolera.

Negotiated payments

I want to comment briefly on the mechanisms that have been employed by the Central Land Council in its handling of the Mereenie/Palm Valley negotiated payments. For the first few years of distribution these moneys were disbursed to individuals in the form of cash payments. The Land Council, seeing that these payments were creating much bitterness and conflict and little real benefit for most of the recipients, has over the past few years set up a large number of small recipient associations and put in place a formula setting out what percentage can be used for individual payments, community purposes, investment etc.

Although this represents an attempt to achieve a better outcome, it is still problematic. Firstly, the proliferation of these associations has meant that the administrative load on the Land Council has become very considerable, with each association requiring its own set of books, formal meetings, etc. Secondly, it smacks of divide-and-rule, with none of the associations ever likely to have the resources to be able to operate independently of the Land Council.

It is understood that the Land Council is to undertake a further review of these arrangements, and it is important that mechanisms are put in place that are both appropriate and consistent. Uncertainty undermines trust in these matters, when people's money is involved, but the Land Council is to be commended for being prepared to have another attempt to improve the structures that are in place.

Conclusions and recommendations

In conclusion I want to summarise what I have said and to make a few suggestions as to the way ahead:

- The availability of royalty moneys represents an opportunity for Aboriginal people to achieve a real and lasting change in their socio-economic status and to improve the quality of life for future generations. This opportunity must not be allowed to pass.
- There is a need for a shared vision of what the economic future could look like if royalties are used wisely. Instead of everyone doing their own thing there is a need for royalty associations, Land Councils and government to talk more openly together, to plan and to look ahead together.
- The Land Rights Act provides no guidelines as to how royalties should be used and royalty associations therefore have considerable discretion and freedom. This freedom must be used responsibly. (I don't think it will be good enough to say to future generations there is nothing to show for all the royalties we received, but at least we did it our way.)
- The Commonwealth has a moral obligation to ensure that Aboriginal people – particularly those affected by mining operations on their land – continue to

receive statutory royalty equivalent payments, even if the Act is repatriated to the Northern Territory Government. This should be written into any future repatriation agreement.

- Royalties must not be allowed to become a substitute for government funding of basic services. To the extent that this occurs Aboriginal people are being denied the opportunity to use royalties to achieve economic recovery.

Discussion

Unidentified speaker: The land councils have decided who to give the money to, who is affected. I think the land councils decide and then it is up to those affected people to decide how to use the money, and who to distribute it to. Between who do you split the money? It is supposed to go for the benefit of all affected people.

Unfortunately the Land Rights Act does not define affectedness, so it has really been left to the land councils to determine who is affected. But the wording of the Act is not the affected people, but those who live on the land that is affected. So that makes it a little easier perhaps to look at what land can be said to be affected. How do you define affectedness though? Is it because you are getting the dust in your eyes when the mining trucks are driving past? That is a very narrow definition of what is affected. It is certainly much broader than that and probably needs to be.

We have mining areas in our people's areas on Cape York. The Land Council of Cape York, is aware of mining companies coming into these areas with their drills looking for minerals. The Land Council of Cape York is aware of this and so are the DOGIT land communities. We have got to be really mindful and careful who comes in. We do not trust any mining people, in our areas because some of these mining people in Queensland are so careless. They wreck the ground and they throw their rubbish everywhere and they do not plant any rehabilitation on top of it. So, we Aborigines in Queensland are really aware of this. If they really listened to us they would do more rehabilitation after they get the mineral out of the land, so there is an opportunity to plant on top of it. This is how we really operate in Cape York Land Council.

But about our royalties. We have already made agreement with Mitsubishi in Tokyo directly. I do not know what is really planned, or how far we are really operating, or how much of that money is really coming in. It is coming to this trust, and therefore the community councils are really the trustees. We are acting as a local government, but we have not got any land rights like in the Northern Territory.

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OUR LAND IS OUR SPIRIT CONTROLLING THE LAND IS CONTROLLING YOUR OWN SPIRIT

Yirrkala Community

Members of the Yirrkala community had been asked to participate in the panel discussion, and although they did not present a written paper they spoke about their experience of royalty payments. The President of the Yirrkala Local Government Council began. He said:

> My name is Bakamomo Marika. I come from Yirrkala. We would like to address some of the views of what mining is doing in our land. Just a brief talk on behalf of our leaders at Yirrkala. We said the company is to manage our land, controlled by the elders. There are beaches, trees, grass, sacred sites destroyed. People go wherever they want without getting permission from the elders or from traditional owners. Our feeling is, set up a Land Management Corporation. We are thinking about having Yolgnu rangers starting early next year – doing both ways – *Balanda* way and *Yolgnu* way. So we want 'both way' education with the rangers' training, using Batchelor College on the job. Instead of us coming in to Batchelor College, we would like Batchelor College to go out to the community. In that way we will have good relationships with *Yolgnu* and *Balanda* within, with *Yolgnu* controlling our own country.

He was followed by Mr Munungarritj who said:

> Earlier on I was talking about land and royalties. Marika here, my brother-in-law, is talking about *Yolgnu* land management. I will speak about royalties. The royalties come through to us. We can manage our own land or control – I like this word 'control' – our own land. It is being in control of your own spirit. The land is my spirit. Whatever you do on my land, you are damaging my spirit and would damage my backbone. So what this talking here is all about is about royalties and about the land. Our land is our spirit. Thank you.

We can manage our own land or control – I like this word 'control' – our own land. It is being in control of your own spirit. The land is my spirit.
(Munungarritj, 1 October 1992)

Discussion

Unidentified speaker: I think that the point that you are making is very good. When we are talking about Aboriginal land management issues, there are some extremely successful models already in place in the Northern Territory, in Uluru and Kakadu National Parks. And quite clearly what a number of people from Arnhem Land are saying is that in some key areas they are not capable of controlling their land in the way that they want to. So in big areas of Aboriginal land, people are starting to look at this management arrangement that exists in a place like Kakadu. Not only to generate employment for large numbers of Aboriginal people, but to put in place control arrangements for sites, and for access for tourism. I think that is something other people from Arnhem Land or other communities might try.

Chris Marshall: Some landowners say that they should be receiving the full amount of the money that comes from the mining on their land. Now that is a controversial issue and at the moment it is government policy not to do that.

This issue was looked at by the Industry Commission a couple of years ago. The Industry Commission examined various references and it did an inquiry into mining and did in fact recommend that traditional owners should also own the minerals. They did not say it for social justice provisions or for any social or cultural reasons. It was purely that they thought that if Aboriginal people owned the minerals then they would have an incentive to allow the development of those minerals. But as it stands at the moment, the law of Australia is largely that the minerals are owned by the Crown. However under the Land Rights Act in the NT, the traditional people can say yes or no to mining. But the Industry Commission pointed out that in fact they acted as though they do own the minerals, because they can stop the mining. But once they have agreed to allow it to go ahead, and the mine develops, the royalties from that are placed in government under existing legislation. It is up to the land councils then to negotiate some other form of agreement for other royalty payments, for joint venture arrangements, for employment. The traditional owners do not own the minerals.

A Queensland participant commented: When Cook came to Australia exploring down in Botany Bay in 1770, everyone talk about what is underneath the ground is belonging to the Crown. It is not. In my law, in Aboriginal Law, it says, what underneath in the ground belongs to us.

It's for the Aborigines, it does not matter where they live, Northern Territory, Queensland, South Australia, Western Australia, it belongs to the Aborigines, we were first. Now you say it belongs to the Crown. It belongs to us, belongs to this people, and belongs to us. That is our law. Traditional laws say it belongs to us.

The Crown, the Government of Australia, the Northern Territory Government and the Queensland Government and the South Australian Government and the Victorian Government and Western Australia Government saying that belong to them. They only come 200 years ago. Our people been live here – Aborigines – 40 000 years. Can you imagine, we are 500 generation descendants.

Milak Winunguj: I know that this conference is important for everybody. I feel very strongly about this land management business. I believe that land management has always existed.

We have managed our land for generations. I believe that I understand this because it has been passed on to me by generations, by my culture.
(Milak Winunguj, 1 October 1992)

We have managed our land for generations. I believe that I understand this because it has been passed on to me by generations, by my culture. We have always had self-management, and we have survived. Our task has always been for survival, regardless what other next door neighbour thinks about it. I feel that very strongly, deeply in my heart, anything to do with land management, self-government, anything. I believe in self-government, our government.

We created the Yulung Government Association because the Yulung people in Arnhem Land feel that we are sick and tired of people making decisions for us. These guys representing us are going down to Canberra, lobbying around: 'Oh these poor black fellows out in Arnhem Land in remote areas, we are making decisions for them.' Look, where that money goes to. To somewhere else. If it is earmarked – for education, essential services, everything, you name it – if it is earmarked, it must come direct to us.

If there is any earmarked funding that is allocated to Aboriginal funding, it should go direct to the Yulung people, and cut the middle man out, just like the Northern Territory Government. Don't give it to them. Give it to us.

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SELF-DETERMINATION OVERHAULING THE ADMINISTRATIVE PRACTICES OF COLONISATION

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In 1987, the Northern and Central Land Councils organised a conference in Alice Springs called 'The Future of Government'. At that conference, the prospect of the Northern Territory becoming a state and developing its own constitution was being talked about by a Legislative Assembly Committee. It appeared at that time that the Commonwealth Government would hand the Land Rights Act over to the Northern Territory government.

This would have meant a drastic reduction in Aboriginal rights and power, the end of the Land Councils, of Aboriginal rights to say no to mining companies and to negotiate with them, to get royalties from mines on Aboriginal land and to keep unwanted people off the lands. This might still be the case in the future.

The delegates at that conference in Alice Springs turned their minds to the prospect of a Northern Territory Constitution. How much power would Aboriginal people have in negotiating an entrenchment of their rights in the Northern Territory constitution and preserving the same standard of rights which the Land Rights Act allows? The delegates decided that that option was risky and resolved that the Land Councils should strive to achieve an agreement with the Commonwealth that it would retain the Land Rights Act as a Commonwealth Act: in other words, that it should maintain its direct relationship with Aboriginal people.

You will remember at that time the Northern Territory Government was changing the Sacred Sites Act and that many people were unhappy about those changes. The Northern Territory Government continued to push for a dam on women's sacred sites near Alice Springs using crude scare tactics.

The Northern Territory Chamber of Mines and the Australian Mining Industry Council pushed for changes to the Land Rights Act to get access to Aboriginal land to explore and mine without the standards of negotiated agreements which the Land Councils had achieved. The Northern Territory Cattlemen's Association and the Northern Territory Government opposed community living areas, or excisions, on pastoral leases. And the Government pushed the so-called Community Government Act to undercut the jurisdiction of the Land Councils.

Those of you who pursued your land claims will remember the opposition from mining companies, pastoralists, the Northern Territory Government, yacht clubs, pony clubs and many other bodies.

The Northern Territory Government and industry bodies want you to give up your culture so that they can treat you like the non-Aboriginal citizens. But at the same time, they have closed schools, such as Traeger Park and Rapid Creek, which had high enrolments of Aboriginal students.

But what was very clear from the 1987 Conference, and at the Barunga Festival in 1988 when the Barunga Statement was presented to the Prime Minister, and again this year in the electricity dispute with the Power and Water Authority of the Northern Territory Government, is that you want to govern your own communities.

The representatives of the communities which had had their electricity cut off by the government, or had been threatened with power cuts, tackled the government over its handling of the billing dispute. The report by the Ombudsman supported the view of the communities, and recommended that the Authority start over again in introducing electricity bills to Aboriginal communities. The community representatives went to the Grants Commission to recommend that the Commonwealth fund Aboriginal communities directly for essential services and not via the Northern Territory government.

In some parts of Australia, a great many Aboriginal people could easily argue that Aboriginal councils and organisations could provide all the essential services and all other aspects of good government rather than the State and Territory governments.
(Marcia Langton, 2 October 1992)

In some parts of Australia, a great many Aboriginal people could easily argue that Aboriginal councils and organisations could provide all the essential services and all other aspects of good government rather than the State and Territory governments.

Aboriginal community councils throughout Australia are already responsible for most of the services which are usually the responsibility of local government councils, and providing other services, some of which are usually provided by State and Commonwealth governments. The Royal Commission into Aboriginal Deaths in Custody has made a number of recommendations on funding and recognition of Aboriginal bodies of local governance and government, based on the evidence at hearings which it held into this issue as an underlying issue in the deaths in custody.

The grounds which Aboriginal people have for arguing for direct funding from the Commonwealth and for a direct relationship with the Commonwealth Government and its bodies, particularly including the Grants Commission, are commonsense ones.

Firstly, they could argue, as some already have, that all the money allocated by the Commonwealth to the State and Northern Territory governments, whether through the Grants Commission process or for services such as housing, health, education, police

services and others, would be spent on what it was intended for. A great deal of the money allocated to the States and the Northern Territory is not tied. In other words, the Commonwealth cannot insist on how it is spent. There is very little accountability when it comes to how the States and the Northern Territory spend Aboriginal affairs budget allocations, but there is an army of accountants, auditors and 'feral abacuses' when it comes to spending by our organisations, councils and enterprises.

Another important argument would be that Aboriginal councils and organisations would be more likely to rectify the continuing inequities. For instance, thousands of dollars are spent on each child under the School of the Air program, and these are mostly the children of the relatively wealthy white pastoralists who least need these subsidies. Meanwhile Aboriginal children are severely disadvantaged in education, even in some as yet rare cases where the schools have become Aboriginal controlled, because of lack of funding.

Most importantly, the argument for self-government of the kind which most Aboriginal community councils and similar organisations have been practising for sometime, would be that we would no longer be subjected to the whims and fancies of crude racist social engineers who have not yet realised that their assimilationist thinking and impulses, which remain after the policy has been rejected (but which once again raises its ugly head in the policy of mainstreaming), are a failure, a failure of possibly the longest 'race' experiment in history.

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If we hope to survive, we have to imagine our futures. The Aboriginal male life span is 57 years and for Aboriginal women it is 64 years. Non-Aboriginal people can expect to live much longer. Our most serious health problem is the mortality rate of young adults, particularly that of young men. Alcohol, petrol-sniffing, vehicle accidents and violence are taking a heavy toll. Aboriginal arrest and imprisonment rates are rising, and it is over a year since the Reports and Recommendations of the Royal Commission into Aboriginal Deaths in Custody were tabled in Federal Parliament.

Since the 1987 conference on 'The Future of Government' in Alice Springs which resolved to maintain a direct relationship with the Commonwealth to preserve the standards of the Land Rights Act, we have learnt a great deal more about the concept of self-determination:

- it is our inherent right. The right to govern ourselves and choose and create our own political organisations for doing so is not a provisional concept but a fundamental freedom;
- the sovereignty of the Australian State can be shared; we could hold sovereignty just as the States and the Northern Territory do;
- that other indigenous people around the world have successfully determined political arrangements to their liking which are expressions of self-determination;
- that the concept of self-determination is changing.

The notion of the nation state as developed by the Europeans in the last two hundred years has been radically changed by the collapse of their imperial power and the emergence of African, Asian and other nation states, as well as by the collapse of communism. As a result, the idea of indigenous self-government is no longer considered in the international community to be absurd as it was by some twenty years ago. Some of the former opponents of indigenous self-determination can now see that there are real benefits to them in allowing these forms to develop. What might the wider community of Australians and the Australian Government consider to be the benefits? I make some suggestions here.

If we hope to survive, we have to imagine our futures.
(Marcia Langton, 2 October 1992)

The creation of the Aboriginal and Torres Strait Islander Commission (ATSIC) as a separate statutory authority is, in part, an admission that 'native welfare' or the colonial administrative regime did not work, from anybody's point of view, except for a few interests which might once have benefited from the containment of Aboriginal people. Today, the perceived benefit of overtly racist administration, as is still practised by the Northern Territory administration, is largely an ideological one maintained by politicians, cattlemen and a few others, who are largely unable to convince the majority of voters in the Territory, the whites, of the worth of their political positions except by appealing to a crude racist rhetoric of 'us' and 'them' by constructing a fearful notion of Aboriginal society.

In relation to developments in federal government, many of us suspect that ATSIC will not work in the way that Aboriginal people expect it to work, largely because of the survival of the 'native welfare' regime in its bureaucracy. Many Aboriginal people believe that the tension between the old welfare administrators and the current desires of Aboriginal people have been fought out within ATSIC especially during its establishment period, and that with the assistance of the unions, the old welfare

bureaucracy has maintained its hegemony – a control that is constantly being contested.

Australians are realising that policies are failing and the approach to Aboriginal matters is embarrassing. Rather than suffer the embarrassment they are attempting to reconstruct their relationship with us and to redirect the power relationships by delegating key parts of the Westminster system – the department responsible to a Minister – to an experimental Commission. ATSIC, in effect, has less status than the Roads and Traffic Authority. The Minister responsible for ATSIC is not a member of the inner Cabinet. He is a junior minister to the Minister for Education, Employment and Training.

The primary role of the ATSIC regional councillors is to relieve the non-Aboriginal bureaucrats of the worst job of all – sharing out the Aboriginal affairs budget allocation to Aboriginal organisations. Australian Ministers and bureaucrats do not want the 'trouble' of dealing with Aboriginal people, a 'trouble' they perceive as some kind of anarchy, rather than legitimate objections to the flawed political system in which Aboriginal matters have continually been placed, and have handed over to the powerless regional councillors the worst jobs, whilst the Councillors are denied even adequate staff to carry out their duties and unable to influence the bureaucracy of ATSIC within their regions and States or Territory because of the vertical hold of the senior bureaucracy based in Canberra. The ATSIC bureaucracy is a separate pyramid from that of the regional councillors. The regional council policy advice goes 'up' to the Commissioners, and the senior executive of ATSIC sends whatever comes out of the Commission meetings back down a different pyramid, that of the public servants in the bureaucracy. Dividing up the budget amongst Aboriginal needs, all of which are impossible to meet because of the severe disadvantage of most of the Aboriginal population, is the worst job of all, and that is largely the job of the regional councillors.

Indians and Inuit in Canada in the 1970s understood the basic principles of the Westminster system and demanded and got their political affairs located, in the governmental sense, in the Prime Minister's Department. Ever since, they have negotiated with the highest levels of government – with the level of the Prime Minister and Cabinet.

Meanwhile, our affairs are dealt with by a junior Minister and by an experiment which is a major departure from the Westminster style of government. If this experiment genuinely gave us power and control over the budget, the bureaucrats and policy, it might have been more acceptable to Aboriginal people than it is proving to be. There is an interesting development however: where Aboriginal people have developed their organisations based on the desire for and principle of self-determination, they have co-opted some important functions of ATSIC to their own ends.

But in the end, the ATSIC structure is not an expression of self-determination. ATSIC will not simply disappear. The movement towards self-determination will result in the development of new policies and organisations which will pursue self-determination and supersede the ATSIC policies and its role as the black house maid to the Australian bureaucracy.

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(Marcia Langton, 2 October 1992)

So what about enterprise? There is a widely accepted view amongst Aboriginal people that if we are successful capitalists and business people, our problems will be solved. The idea of the former Aboriginal Development Commission and the current body, the Commercial Development Corporation, came from Aboriginal people with these ideas. What were they hoping to achieve? From their writings and interviews, it seems that they had some notion of Aboriginal self-sufficiency and dignity through free enterprise. For the European imagination, dignity has to do with enterprise and human endeavour to do with labour and the fruits of labour. They want us to think like that too.

Do we really still think that there is such a thing as economic self-sufficiency? We are all demanding and striving for a sufficiency, or the satisfaction of basic needs and wants. But the notion of economic self-sufficiency is a hippie fantasy. What we should strive for rather is a *strategic* control of economic resources.

The most important economic resource is land, but we cannot afford to merely regard it as economic as ATSIC does. You all know the cultural reasons why owning land is not simply to do with making money, or making a living. There is another good reason for regarding land as a strategic resource. It has to do with control of resources. Most of our conflicts with white Australia have been to do with control of resources and that conflict will remain the dominant feature of that relationship. Aboriginal control of resources is a basic right within the category of rights labelled self-determination.

A pressing problem which should affect our thinking about land and resources, and of which many are not yet aware, is the world population and environmental crisis. In other parts of the world, millions of people are dying of starvation and as a result of wars because of land issues – and particularly because of land degradation issues. Australia may not be the richest country or even in the top ten, but Australia is the second most desired destination after the United States of America for all countries according to a recent survey. A key tactic of the Australian economic planners is to increase the Australian population by increasing immigration. Most immigrants will be skilled economic and environmental refugees. Aboriginal lands will come under greater and greater pressure as proposed development and residential areas. Enterprise development for Aboriginal people must be thought about in more expansive terms than those usually found in the feasibility studies commissioned for

ATSIC funding. The approach ought to pose questions like this: can we locate and develop enterprises which increase our control over land and gain control of key economic structures – such as in small towns like Tennant Creek in Central Australia or Coen in Cape York. Owning the supermarket in a small town can give an enormous amount of control, as the members of the Arnhem Land Progress Association have discovered.

Welfare dependency is a problem in our thinking about self-determination. We all want to escape welfare dependency, but there is another way of looking at that. They are Australian citizenship entitlements, and have been characterised as such by Crough, Howitt and Pritchard, instead of as 'welfare payments'. A social welfare system will always be necessary and the high standard of the Australian social welfare system, in comparison with other countries in the region, ought to be maintained but not as the dominant part of the Aboriginal economy. Aboriginal enterprise ranges from the traditional hunting and gathering economy and land and resource use, ownership of stores, hotels, other real estate, interest producing investments, tourism ventures, cattle raising, arts and crafts production and statutory benefits from mining developments in the Northern Territory and Queensland. Social security payments, especially the Community Development Employment Project funds, will remain a key part of the Aboriginal economy throughout remote Australia.

A key part of the Aboriginal economy which we have tried to get some control of is the Aboriginal 'industry', in which most of the money goes to the administrative costs and the costs of employing a very large number of non-Aboriginal bureaucrats and technicians.

What I am getting at is that we have to start thinking about these problems in a cohesive way as aspects of our striving for self-determination – and that means strategically.

There are some very practical things which we can do to improve our situation right now and to improve our bargaining position for self-determination. The most important one is that we should develop a position, based on research, of cutting out the Northern Territory and the States as intermediaries in those areas of Australia where people are ready to assume self-government in relation to those aspects of government and essential services presently delivered by the Commonwealth, State and local governments.

Discussion

Marcia Langton responded to a series of questions about the power dispute. Many of the deaths in custody, as you know, were as a result of negligence, a failure by all kinds of people in respect of their duty of care, ranging from prison officers and police right through to doctors, psychiatrists and public servants. I am saying that the cutting-off of electricity to a community like Papunya is, in my view, a failure of the Northern Territory government's officials to take their duty of care seriously. And you have a community which is already an emergency situation in world terms. Anywhere else in the world, Papunya and communities like Papunya would be in UN terms, 'a least developed nation'.

Now, what kind of people cut off electricity for a community like that? Something serious is going on where the basic rights and needs (as they are defined in modern times) are not provided by a government, an intermediary government.

Back in the early 1970s, the Commonwealth and the State governments signed Memoranda of Understanding to divide up who should be responsible for delivering services to Aboriginal people. Now Aboriginal people knew nothing about these and had no say in drafting them. As a result, the Commonwealth has certain responsibilities under these Memoranda of Understanding and the States and the Northern Territory government have other responsibilities. But what we get, as the clients of those arrangements, is completely irrelevant to the way in which that process works. I am sure it is difficult for Aboriginal people by and large to draw any other conclusions than that there is a monstrous neglect.

If you look at some of the cases before the Royal Commission, you find that the police would pick somebody up off the street, take the person to a hospital. The sisters and doctors would say: 'We are not going to treat dirty drunken blacks', and throw them back out on the street, and the police would pick them up again and they would be found dead the next morning. And that is a pattern right across Australia.

So my strategic approach is to make our already existing network of service delivery organisations much much stronger. You do that by taking the untied grants, which are never properly accounted for, which the Northern Territory and State Governments are getting on our behalf.

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(Marcia Langton, 2 October 1992)

All my adult life I have gone to Aboriginal medical services and all I have to say is that it is too bad that there is not an Aboriginal hospital. I still find it offensive to go to a white hospital and most people do.

So there are all these practical problems and you might call it a dream, but it is not, because many Aboriginal people are already doing all these things that I am talking about.

Unidentified speakers: Unless other governments recognise sovereignty, it is not going to make a damn difference.

Where are we at? Every Aboriginal person has to ask themselves whether we are part of the problem or part of the solution. And the thing is, that unless we get total economic independence and governments recognise this sovereignty, we are never

ever going to be part of the solution, we are always going to be part of the problem because we cannot make any decisions about what we want to do. We are the most governed people in the world. Every damn thing you want to do, you have to go to someone else.

Milak Winunguj: As you are aware the NT Government has introduced power charges. One of my major concerns for this is that it is taking more money out of the community back to the Territory Government. They are going to introduce water charges and they are going to introduce rates. Now when that was discussed at Maningrida, people had a real problem with it.

That water belonged to the people. It was there from the beginning, they have grown up as children knowing that the water belongs to them, that it is a billabong or a creek. And it is really difficult trying to understand how a government can introduce charges for something that was always ours.

A woman from Queensland: There is a similar situation in Queensland, where in order to pay for services the Aboriginal community has to find money. Communities have to keep an alcohol canteen open and use the profits from it to fund essential services. The only way that we can have running water and plumbing and other essential services is by watching our men drink themselves to death.

John Christophersen: You made a point about sovereignty. As I see it, sovereignty is just a group of people who are a self-governing community. A group of people who have social, economic and political independence. They can make up their own minds about what they want to do in their own country.

What it means to me, is to be able to say to a government like the Northern Territory Government, if they want to deal with us, they deal with representative groups, on an equal basis. And we could say no, we do not want any mining, or we do not want you coming here. At the moment, if we say no to a mining company, every five years they can come back and ask you again. The last mob we had, we told 'no we do not want to talk to you again', they come back. There is no sovereignty.

Marcia Langton: The problem for me is that I do not think ATSIC solved the problem in any way, but probably made it worse. How to translate that very local expression of self-determination into notions of self-government. That is the hard part. How do we get from there to there. Because of these service delivery problems and cost problems and ...

John Christophersen: They are not insurmountable. The problem is there are so many problems that until we actually get off our butts and do it, or have the opportunity to do it, we are never going to know. We are only hypothesising here. That's because we have not got the opportunity to divide the funds up. 'This is your share now, go and do it.' We have never been given that opportunity. It has always been said that you approach government.

In response to comments about the overall decline in the Australian economy, and the problem of having access to these declining funds **Marcia Langton** commented: Well I do not regard that as an obstacle, I think that is a great opportunity for us. You see little examples of Aboriginal people taking advantage of the declining white economies across remote Australia, especially with the decline of the cattle industry in the north, especially Cape York for instance.

There was a report in Alice Springs on the Central Australian Aboriginal economy. When the combined Aboriginal organisations got the report, they called that luncheon for the business community at the Gap Motor Inn, invited them all along, showed them the results of the survey, put up pie charts on the overhead projector and said: well, you know, the combined budget of the Aboriginal organisations for vehicles is $4m, the combined budget of the Aboriginal organisations for stationary is $70 000, and yet we do not see a single Aboriginal person employed in mainstream. Lift your game or we will take our money to South Australia or Perth.

And so people have got choices if they have economic power like that. Why are we not governing? That is what people should be asking. So when you start to unpack the figures and the ideas and everything else, the notion of Aboriginal people running government here is not so absurd.

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Romina Fuji: I am in the ATSIC regional council for the Port Kennedy area in the Torres Strait and we have a problem too. We wish they would give us the money and we would decide what to do with it. ATSIC bureaucracy spends most of the money and the regional council is only spending a little money on social welfare.

And then we have our own people turning against us saying that we are ATSIC; but we are not ATSIC, we are just trying to divide this small piece of cake. And the big one is in the bureaucratic arm that they control.

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THE LAND WORKSHOP SUMMARY

Marjorie Sullivan and Marcia Langton

Within the overall conference theme the Land Workshop topics had been planned to focus attention on the present situation and on what might be improved in the future.

Although the plenary discussions had emphasised the importance of what could be learned from other parts of the world, most of the Land Workshop discussion concentrated on the existing situation in Australia – particularly northern Australia – with a few Canadian experiences being used as models for possible actions here. In the later stages of the workshop, a few speakers suggested what we could perhaps contribute from here to the international discussion of indigenous rights and self-determination.

Throughout the workshop, discussions focused on issues related to the sustainable management of land and land resources, control over traditional land and land use, and sovereignty or self-government. At the outset of the conference the hope was voiced that the discussions would contribute towards framing recommendations, which might be directed to land councils, to ATSIC, to government, and to research bodies, and that any such recommendations should be directed specifically towards particular organisations or individuals. Participants were urged, if they had a good idea that somebody ought to take up, to identify who that 'somebody' should be, with the hope that representatives from various organisation represented at the conference would try and make sure these suggestions were placed on the appropriate agendas.

As the workshop proceeded, the discussions fell into three main areas:

- The *Mabo* case and its implications;
- Problems associated with land use and management, especially with securing money to manage land and resources;
- More general issues of sovereignty, community self-government and socio-economic self-determination.

Preparing recommendations from the Land Workshop

There was some discussion on the ability of the workshop group to make recommendations to the plenary session. Many participants felt that comments were those of individuals, not necessarily suggestions from the workshop as a whole. It was noted that people were free to object to or support what may go forward as the workshop's recommendations to the second afternoon's combined session.

In chairing the session to draw together the recommendations, Marcia Langton reminded people that the session was important in the sense that the recommendations would reflect the opinions of the wide range of participation at the conference. It was agreed that the workshop group was simply a discussion group,

that what came out of that discussion would be very important in what went into the afternoon's plenary session, and that it would not be necessary that everybody agreed but that all of the major recommendations, where possible, should at least be aired in the afternoon.

One major worry in the workshop was how far recommendations should go, for action relating to the Mabo decision. Most participants considered that issues relating to the Mabo case were so sensitive that they should not be the subject of public discussion, but be left to a committee from different land councils which was being formed. It was agreed that the Land Workshop would not put up a recommendation, but it was accepted that *Mabo* would definitely come up in the plenary session.

One recommendation followed from the summary statement in Marcia Langton's paper. Others emerged from the recommendations in Chris Marshall's paper.

One formal recommendation was proposed for ATSIC:

- That ATSIC, taking advice from its Aboriginal membership, should coordinate and run Commonwealth departmental controls over the availability of funding for support services for Aboriginal activities in water and land management.

There was considerable concern expressed about the total lack of regard by participants in the recent Variety Club Bash for Aboriginal sites, and anger over what they had done on Aboriginal land, particularly at Uluru. John Christophersen was asked to produce a draft recommendation which related to the Variety Club Rally (Bash). There was a recommendation that a letter should be sent from the conference to all the sponsors of the Rally, deploring the recent events at Uluru and requesting that the sponsors of the Variety Club Car Rally reconsider their support. It was noted that Kelloggs had dissociated themselves from the events that occurred, but that they might continue to sponsor future Variety Club Rallies. It was suggested that they should be asked to reconsider their sponsorship, especially as the organisers had said they planned to make the next year's Bash bigger and better.

Some people felt this was not enough, and there were also suggestions for pursuing legal action, and the question of who should initiate this action was also discussed. The recommendation to write to the sponsors was agreed to. No recommendation to take legal action was made.

On the previous day Barbara Flick had made a very detailed statement which, although phrased as a question, was in fact a recommendation. It had been a negative statement about ATSIC, but a positive suggestion had followed on the second day: that if ATSIC is going to exist, it should be elevated and given both status within government and power to take on the role of management, noting that the two are not incompatible. This was to be reworded as a recommendation from the Land Workshop.

It was agreed that a small group would work on various other issues which had emerged during the workshop over the lunch break, to produce formal recommendations by the afternoon. All the recommendations which were discussed in the closing hour of the session were collated and re-worded by that smaller working group during the lunch break.

Some notes and recommendations from the Land Workshop were presented to the plenary session by Marcia Langton, and they appear below.

> There was a long discussion of the Mabo decision. There were long discussions on land management including conservation issues, funding issues for land management and more Aboriginal approaches to land management and a very interesting report on the kinds of evidence that would arise in the evidentiary requirements for post-Mabo litigation.
>
> There were also discussions on self-determination and Aboriginal ownership of land and the resources of the land. Many people at the workshop made it very clear that it is the indigenous people who own the resources of the land, whether under the land or under the sea and indeed all the resources on the land such as timber and so on.
>
> In the self-determination discussion there were discussions on the poor delivery of services to Aboriginal people, water, electricity and rate charges being introduced in the Northern Territory, kava and alcohol being sold to make profits to pay for essential services, and practical ways of realising our right to self-determination.
>
> I will go to the formal recommendations that this conference affirms our inherent right to self-determination and self-government institutions and the need for nationally and internationally recognition of indigenous peoples right to self-determination. Around that issue people discussed the issue of conflict over Aboriginal resources, whether it be mining or other developments on Aboriginal land and the view of the elders was that the indigenous people own those resources. One elder said: 'A self-determination is in our hearts.'
>
> There are a range of funding problems and a range of problems with the way in which ATSIC is constituted. Those were discussed and the view of the meeting was that there needs to be a holistic approach to funding so that it is not a economic rationalist one in which development excludes notions of traditional relationships and traditional economic use of the land. There was an excellent paper by Chris Marshall of Murijuta and his suggestions were that the availability of royalty moneys represents an opportunity for Aboriginal people to achieve a real and lasting change in their socio-economic status and to improve the quality of life for future generations. This opportunity must not be allowed to pass. There is a need for a shared vision of what the economic future could look like if royalties are used wisely. Instead of everyone doing their own thing, there is a need for royalty associations, land councils and government to talk more openly together, to plan and look ahead together.
>
> The Land Rights Act provides no guidelines as to how royalties should be used and royalty associations therefore have considerable discretion and freedom. This freedom must be used responsibly. The Commonwealth has a moral obligation to ensure that Aboriginal people, particularly those affected by mining operations on their land, continue to receive statutory royalty equivalent payments even if the Act is repatriated to the Northern Territory government – let's hope that that does not happen – this should be written into any future repatriation agreement. Royalties must not be allowed to become a substitute for government funding of basic services to the extent that this occurs. Aboriginal people are being denied the opportunity to use royalties to achieve economic recovery.
>
> Another recommendation was that land acquisition needs should be coupled with the resources to manage the land. The conference discussed the impossibility of finding an integrated approach to land management, especially in relation to Aboriginal land, and of finding sufficient funds for urgent land management problems – the clear case being the mimosa problem. Funding for land management should be coupled with the recognition of the holistic situation of Aboriginal communities including socio-cultural and economic. Funding of services from unacceptable practices is a problem: for example, using royalty moneys to provide services and money from enterprises such as grog and kava.

The workshop talked about indigenous futures, and more appropriate forms of land usage that are traditionally or culturally based. Although financial returns from cattle operations may be less, the long-term economic value of the land, certainly to Aborigines, would be enhanced. But funds are needed to overcome the post-contact land degradation. Another recommendation was that ATSIC, taking advice from its Aboriginal membership, coordinate with Commonwealth departments to solve the poor availability of funding and support services for Aboriginal activities in land and marine management, using the report, *Caring for Country*, as a basis.

The workshop agreed that we need to seek advice from other indigenous groups such as the Inuit on approaches to public education to strengthen our education campaign and achieve consensus within Australia for our aspirations.

As a first step towards self-governing institutions as expressions of our right to self-determination there was a recommendation that Aboriginal organisations attending this conference write and research and document a position on direct Commonwealth grants to Aboriginal self-government bodies cutting out the Northern Territory and States as intermediaries or go-betweens in those areas of Australia where people are prepared to assume self-government and deliver services which are at present the responsibility of local and state governments.

The final recommendation was that the conference write a letter to Kelloggs and other sponsors of the Variety Club Car Rally Bash expressing our disgust at the behaviour of some participants at Uluru National Park and asking them to reconsider their sponsorship of that function.

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INTRODUCTION TO COMMUNITY WORKSHOP AND DISCUSSION

Greg Crough, Senior Research Fellow, North Australia Research Unit
(seconded to Geography Department, Sydney University, January 1994)

Community Workshop

The workshop consisted of a large number of people from a diverse range of communities in northern Queensland, the Northern Territory, the Kimberley region of Western Australia, and some other parts of Australia. The starting point of the discussion in the workshop was that there are many difficulties experienced in Aboriginal communities that are common to indigenous people in Australia and overseas. The participants in the workshop were asked to consider the ways of increasing community control over the issues that were of most importance to Aboriginal people.

The workshop divided into a number of groups each of which developed its own method of discussing the issues. The groups concentrated on issues such as the meaning of self-determination, service delivery, education, and housing and community infrastructure.

This section of the book is not a summary of the workshops, since this proved to be very difficult given the nature of the discussion and the wide range of topics covered. However, some of the more important points raised by many of the speakers have been included here.

Darryl Pearce: Basically the bottom line is that self-determination will never be used at the present time by the Australian government in an international context. I think it was in its first report to the Committee on Elimination of Racial Discrimination that the then Assistant Secretary of the Department of Aboriginal Affairs stated that the Australian government would use the word 'self-management' rather than 'self-determination' in an international context. Self-determination would only be used within Australia.

Ultimately, when it comes down to it, self-determination at the moment is basically the right to chose a government program that you wish to run on your community. In real terms there is nothing at all that has given Aboriginal people the power to give direction to their lives, to really take control of it and set it off in a direction that they wish to go themselves. It is always controlled from outside. Even if there are advisory mechanisms, you are always advising governments. Governments then take that information and develop programs. Self-management comes from the right to manage a government program and all those restrictions that are placed upon it.

Aboriginal people went to the Grants Commission and argued for direct funding. They do not believe the funding processes at the moment are to their benefit; they work against them. The controls – and what I mean by controls is the process of making decisions on where the money should be spent – are taken out of people's hands. That ranges in every single service area from education through to grading a road or collecting garbage. There is no real self-determination by Aboriginal people about where they wish to go and what they want to do.

Mr Barkley(?): We got a lot of problems down there with our community councils, the powers that they have more or less for governing, their rights for their money, how they want to spend it. There has been a little bit too much interference from old ADC, DAA minds. They know what is best. People come out there and they think they know what they should be doing for these people, but they do not know. They have not got the power or the ability to speak on behalf of any of those people because they have not lived the lives that these people have lived out there.

Just from my own experience – that is what I am speaking on now – about the associations. The members have not been taught properly how to take control of their association because the government people using their lack of knowledge on how to run their association for their own benefit, so that they can get good reports up and keep their jobs and all that sort of good stuff. It goes right back down to the consultation process, I suppose, on setting up those associations. A lot of people just go in there and say 'you need an association', so they incorporate people. They do not ask them about their beliefs on how they should be running it, or their cultural background on how they should be running it through cultural way and through the white system. There should be some sort of a line there where people can run their own lives to their traditional way, what they want to do, and not just saying here is your money and here are the guidelines.

There should be a little bit more input from government, especially from Federal government, from stopping the Northern Territory government from interfering on a lot of these communities, spending road money somewhere else, or communication money somewhere else, air strip money, health, education, going right back to all the things that make up communities. A lot of communities are falling apart because of alcohol problems. Everything comes through education. There is no education system there that is specially designed for Aboriginal people to learn how to operate their lives and come up with a direction. It is up to those individual communities to try and fight by themselves, to Office of Local Government and departments such as ATSIC, DEET, whoever it is. There is no direction for Aboriginal people. It always comes back to that person or one of the community problem. Some people just have not got the ability to carry through the things that they want to push forward for, and because of their lack of education, they get pushed aside. The Council is just being used as saying that is the way you get your money, but you listen to what we tell you and you run money how we tell you to run it.

So we go right back to self-determination. There is no self-determination. I do not care what anybody says. I have never seen any community that has been really supportive of self-determination. The ability for departments to come in and grab a hold of money that was given to that association, they do what they want to with it. They come in and take that money away from people. They say that this person cannot have that job. You have got to give it to somebody else. You have got to give

it to a white person to run him. They got no trust for Aboriginal people to go out there and have their own employment. So how can you really get a direction about self-determination that way through community basis?

Unidentified speaker: When you say that, they come out, everybody want to help. They help you so far and then they leave you there and then when something goes wrong, they turn around and they take it off you. They say you don't know how to run it. They do not go through the proper consultation of saying: 'How do you want to do it?' They come out and say: 'This is the way you do it, our way.' They don't say: 'We are open for a bit of flexibility here. You throw in a few things that you want to run it your way but we also have got to have this here for accounting money', something like that.

Unidentified speaker: Where there is money involved, then they look at things like white people's behaviour, like making money, tourism, mining, all this stuff that is to do with making money. I am talking about the government funding bodies. Culture, language and Aboriginal stuff is not a priority. That is by experience. It is two perceptions operating at the same time. It is white people with all these wonderful ideas about how we are going to get Aboriginal people, we are going to develop their communities and give them money to do all these wonderful things. But the Aboriginal people themselves, their priorities, may be that they might want to try and improve their quality of life in other ways. If you have got these two perceptions operating, then there is conflict. If you look at the ATSIC programs and any other government funding programs, they do not fit in with what Aboriginal people really need and really want. They might fit in with improving people's lifestyles in some directions and some ways, but it is not the way that Aboriginal people may want to go right now.

Darryl Pearce: It is part of an interesting contradiction, I guess, in a lot of terms. But basically when you are asked to get involved in an enterprise, the enterprise is controlled on an economic level simply because the funding bodies require you to meet a business plan which is developed. Most times it is a non-Aboriginal business plan. It does not take into account social accounting factors. For instance, is a shop actually making money or losing money if instead of selling its fruit and vegetables and making a 40 per cent profit, it gives the fruit and vegetables away to the community because the community are all on the dole and want to improve their nutrition within the community? So is a shop actually benefiting the community? Is it doing the right thing, or is it going the wrong way? Most times you have been told by the government officers it is going the wrong way because you are not making a 40 per cent profit, you are not employing people within the community or whatever. Or is it the fact that you had six community members working for a shop, it was making a – it is actually a true case – 10 to 20 per cent profit. It wasn't good enough. They sacked the six Aboriginal workers, brought in a husband and wife team, two non-Aboriginal people making a 40 per cent profit, and were telling everybody how good the shop was now that they got proper management. It had nothing to do with management. What they basically did was took away six wages from the community. The social impact of what they had done is still being felt today.

That is what people are saying, that people are not interested in setting up enterprises and businesses and structures, which is basically promoting what non-Aboriginal people promote themselves. In other words, Aboriginal people want to be Aboriginal

people. They do not wish to be black Australians. That is the bottom line, certainly from my perspective anyway.

Unidentified speaker: I would like to make a bit of a point about housing. In my experience in a few places there were ATSIC housing funds. Those houses were granted to these certain number of people. That person had his name down for an ATSIC grant house and the next person and the next. Then ATSIC turned around and said: 'We have granted you that house but you still have to pay rent'. What is the deal? If they are granting him a house, why should they pay rent? This is one of the things you have got to think about. These sort of things are going on. Is it right, or is it wrong? They think it is right. I reckon it is wrong. I suppose it is the same as Power and Water Authority. They go and put up big generating plants everywhere. I don't know if they asked the people to put them there or whether they wanted it in the first place. They just went and put it there, I suppose, because they reckoned that is the best thing for people. For white man society, electricity is something essential. Where I come from, I don't even use it. Wood good enough. These are the sort of things. People are being bled for money paying rates. Why should they pay rates when it is on their own land?

Mr McAdam(?): I will try to give a perspective, or an idea, about some of the issues which are confronting Aboriginal people and Torres Strait Islanders. Obviously, I cannot speak for the whole of the Territory, and possibly I cannot speak for the central region. But I think it is important that at least I give some ideas in terms of some of the issues that are facing people. They are not dissimilar Australia-wide.

One of the issues that I think Aboriginal people face is in the area of local government. We have a situation where the Northern Territory government today is obviously hell-bent on mainstreaming just about every organisation and, in doing so, imposing standards which are in the main inappropriate for Aboriginal people. There is a very important issue here because the Mabo case obviously has a lot of new implications for the direction which the Aboriginal struggle and the Aboriginal and Torres Strait Islander struggle takes in Australia. But it would appear to me that the Northern Territory government is aware of this to a very large degree, and in the main it is attempting to re-introduce the old days, in the sense of cultural genocide.

There is another issue too, which people have talked a lot about today and it is 'self-determination'. It has been supported or bandied around – at least supported by the Australian government – but I think what we must recall is that in the past self-determination was something which was determined in the main by bureaucrats of ADC, DAA and a whole lot of other State and Federal government departments. There seems to be a whole new emphasis on self-determination and what it means for Aboriginal people. People talk about self-management. A lot of Aboriginal communities have been managing their own affairs in their own way – in a competent way – for a large number of years. Yet I believe that the Australian government obviously still has not come to grips with what we call self-determination and is still applying parts of self-management to self-determination. Self-determination is not something which big groups of people can determine. It is very much a case of different groups of people determining their own lifestyles in a way which suits them and I think that is a very important point.

The other issue which I think affects a lot of Aboriginal people in the Territory today is funding. We have seen situations where the Territory government has received

literally millions of dollars over the last, I do not know how many, years. We have had self-government, obviously, a long time and they have absorbed millions of dollars in the name of Aboriginal people, to provide better housing infrastructure and services to Aboriginal communities. It is quite obvious that in a lot of cases they have not done this because Aboriginal people still suffer. Aboriginal people still suffer conditions which are intolerable and would not be tolerated in a whole lot of other countries. But it seems very obvious to me that direct funding is a very big issue and it goes a long way to what some of us are calling 'self-determination', or at least how some of us are interpreting 'self-determination'. By receiving monies, I believe that Aboriginal organisations and communities are able to acquit or at least spend those monies in a way which suits them. But if Aboriginal people, or organisations, were able to get access to direct funding, as opposed to the present situation where it comes via the Northern Territory government, then I think that would be at least an initial step towards self-determination, and obviously self-government.

But, it just seems to me that the Mabo case and gatherings such as we are having here today, give an ideal opportunity for Aboriginal people and Torres Strait Islanders to develop directions, particularly in the area of self-determination which suits all of our communities.

Under international law all nations and peoples have the right to self-determination. In our view the right to self-determination is not a right that can be given or taken away by governments. It is inherent. It exists whether or not governments and international organisations recognise it.
(Unidentified speaker)

Unidentified speaker: Under international law all nations and peoples have the right to self-determination. In our view the right to self-determination is not a right that can be given or taken away by governments. It is inherent. It exists whether or not governments and international organisations recognise it. The right to self-determination means the same to us as it does in international law:

- the right to determine our own destiny;
- the right to determine our own political status;
- the right to determine our own economic structures;
- the right to pass on and enrich and enhance our culture including our language;
- the right to determine our own social organisation;
- the right to control our land, its resources and our seas;
- the right to own and exercise our spiritual beliefs;
- the right to determine what sort of economic base we have, including the right to impose taxes and to engage in trade;
- the right to determine our laws both criminal and civil; and
- the rights to determine what non-indigenous peoples do on our lands.

Self-determination means self-government, means power over our lives, some autonomy. It is not for international law to tell us that we have or do not have self-determination as of right. We do have that. Our task is to put that into practice and how we take control of the agenda.

- *the right to determine our own destiny;*
- *the right to determine our own political status;*
- *the right to determine our own economic structures;*
- *the right to pass on and enrich and enhance our culture including our language;*
- *the right to determine our own social organisation;*
- *the right to control our land, its resources and our seas;*
- *the right to own and exercise our spiritual beliefs;*
- *the right to determine what sort of economic base we have, including the right to impose taxes and to engage in trade;*
- *the right to determine our laws both criminal and civil; and*
- *the rights to determine what non-indigenous peoples do on our lands.*

(Unidentified speaker)

Ms Booker: We as students of IAD, Alice Springs, in common with many other Aboriginal people in Central Australia, oppose the decisions by the Northern Territory government to close our schools, like Traeger Park and just recently Yirara College. By the Northern Territory government closing these schools, they are using Aboriginal education money to fund private schools. We should be asking the Northern Territory government to fund Aboriginal controlled education. Also the Northern Territory government is not facing up to its responsibilities to provide quality education for Aboriginal people and students by closing these schools. The Traeger Park school was given to the Catholic education system, and there was no cost involved at all. It was handed to them. Yirara College is now being handed over to the Lutheran Church. Every year at IAD, they have a battle of trying to get funding out of the Northern Territory government to keep IAD open, so that they can run courses such as these vocational management courses.

Unidentified speaker : What's to be done? First, there should be a moratorium on funding until Aboriginal people set the agenda. We need to set up an alternative government, the Aboriginal Provisional Government. Aboriginal people should rewrite the Land Rights Act. Do Aboriginal people have the right to determine who

are traditional owners in their own area? Aboriginal people should rewrite the ATSIC Act, to review and restructure ATSIC, to give power to the Aboriginal elected regional councils. Local ATSIC regional councillors should determine, or make decisions about, all aspects of Aboriginal life, including enterprise development. The community consultation process has to happen through workshops in all Aboriginal communities, not just sending questionnaires out like has just happened with the ATSIC review. A fighting fund should be set up to financially support Aboriginal workers who suffer hardship through lack of funding. The federation of Land Councils, in consultation with every Aboriginal community and all ATSIC regional councils, should rewrite all policy and implementation strategies on Aboriginal education, health, housing, land rights, self-determination, direct funding, and everything else to do with Aboriginal organisations and communities. The long-term goal is for direct funding to all communities. A short-term goal would be direct funding to regions. The ATSIC regional plans have to address the need for appropriate training so that Aboriginal people can obtain all the skills and expertise to attain self-determination in their own communities. It is no use talking about self-determination if people do not know the process or how they are going to achieve that. In the past Aboriginal people have not even been able to make a decision about anything, and all of a sudden they are given self-determination, but not taught or re-socialised about how to think in those terms and act in those terms. All capital works and housing programs should include local employment provisions in the contract. Aboriginal people need to be re-socialised, to change the dependency mentality, to be replaced by people who are properly skilled and trained to practise real self-determination.

Wayne Pash: Self-management, self-determination, is not necessarily what non-Aboriginal people say it is. It is what this collective Aboriginal voice says it is. The first priority was getting Aboriginal control of education. There was support for a government enquiry into curriculum, setting up of Aboriginal universities, community control of education. Control of education, followed by self-determination, leading to control over all the other sorts of services in communities like health, housing, roads etc. One of the important considerations was jobs in communities, education being provided in communities to keep the young people in the community, practising the culture but also having meaningful jobs and jobs being linked to training. Another issue was the planning issue. A lot of the planning processes have been a waste of time, and the processes have not been appropriate to Aboriginal people.

Unidentified speaker: In some cases we can be a very organised political force and in other cases we can sit down. We have been known to sit down and let things happen to us. The time has come when I think we cannot sit down anymore. I think that there is such a thing as personal empowerment which comes about by listening to people talk; which comes about by analysing things for ourselves; which comes about by working out where we want to go and how we want to get there. Out of personal empowerment comes community empowerment. And once you have people in a situation where they feel empowered as a group, that is when a political force can start to be realised; that is when no one can abdicate responsibility. I think we all here have responsibilities that we cannot abdicate because once you know what is going on, you have to participate in it.

I always think that blackfellows have been on a bus now for 200 years and the saddest thing about being on that bus is that we always let somebody else drive it. We are always responding to government documents, to government positions, to government decisions. We can spend our life doing that, or we can say: 'Let's stop all this, let's stop and think about what our agenda is. Where do we want to go? How are we going to get there?'
(Unidentified Speaker).

We spend a lot of our time whingeing. We can spend the rest of our lives whingeing about what the Education Department is doing and their closing down schools; what the Health Department is doing; how all the money gets caught up in administration and people are still dying from curable diseases. We can talk about all those things, but we do have tools and we have got to get off the back foot. Stop whingeing about it; show some initiative; take the forward line. There are tools like the recommendations of the Royal Commission into Aboriginal Deaths in Custody that set out quite clearly why education has failed Aboriginal people and why people should be able to be empowered to make decisions about how they want their children to be educated. That is a tool that should not be left sitting on the shelf. We have a responsibility to our children and to our future by defining new parameters of how we want to be educated; how we want to be serviced with regards to health and legal issues. So let's stop whingeing. Let's use the tools we have got; get off the back foot and start running with them. Because as long as we do not drive this bus, we have got no control of where it is going. It is time to set our agenda and to fight damn hard for it. We have to do it as a group because one person will not change what is happening. We have to try and empower the people that we work with:

- to understand the issues;
- to understand the history of oppression;
- to understand the history of colonialism;
- to understand how that impacts on us today; and
- to understand that we are not powerless people.

We are not at all powerless. We allow ourselves to be put in a powerless situation if we are lazy; if we don't have the guts, we allow that to happen. But it need not happen. We need to take hold of ourselves, of our future, and we need to make some drastic changes. This is our time. It is the only time we have. Our parents had time. Our grandparents had time. The onus now is on us to advance our situation. We need a positive outlook.

Unidentified speaker: We are all equal in the eyes of the law and, as Australians, we are all equal, and we all have choices. Well, I say pooh-pooh to that, because your choices are limited by your resources. If you can afford a brand new motor car and

brand new boat, your choice is going to be really great. If you are on the dole and living in a fringe camp, your choice is going to be extremely limited. And so it is fine on one hand to say that we do have the ability to choose, but our choices are limited by our resources. And so in all these things there must legislated funded support. Otherwise you cannot have any kind of helping program if there is no funding for it. Otherwise, you are just doomed to failure.

Unidentified speaker: What people are saying is that there are some actions that can take place from individuals, groups, families and communities. But what you have got to be careful about is that too many times when you go to conferences and meetings people stand up and complain. They talk about the problems they have in their community. That problem is very important, but it is also the same as the next person, and the next person, and the next person. What we need, instead of just coming and talking about the problems, is to talk about what we are going to do to make it right. One of the things that is said all the time is: 'You have nothing to lose.' You do have something to lose. You can lose the rights of being an Aboriginal person. You can lose your self respect, you can lose the belief in yourself, or your family's belief in you. So do not let anybody ever tell you, you have nothing to lose. There is only one way forward. You do have a lot to lose, but it is up to you to make a choice as individuals and families and communities to go forward, to keep that fight going so that our children and grandchildren do not have to fight the same fight that we are fighting today.

Unidentified speaker: The way I see it is that Aboriginal people across the board really do need to be unified and to speak in a unified manner. At the moment there are so many differing views and probably always will be, which will be our greatest downfall. But without that we are not going to go any further. So it is up to Aboriginal people across the board to start educating one another.

John Christophersen: It seems to me that there has been a whole lot of talk going on about self-management, self-determination. For some reason or other, nobody is prepared to stand up and say: 'Righto, we want a bit of sovereignty thrown around here, and we want to be socially, economically and politically independent.' That is what I mean by sovereignty. Nobody is talking about this. We are going to continue talking about getting land rights through either fighting through the Land Rights Act or waiting for things from the Mabo case which has thrown a new light on the whole thing. But we are accepting that we are going to continue to have some sort of legislative law governing us. We are not going to be our own political, social and economic selves. We are going to continue waiting for governments to give us money.

Another thing I want to point out too, is that it seems to me that there are a lot of people who are promoting reconciliation as the way to go. We have not even really discussed it. I am not sure that the majority of Aboriginal people in Australia know about reconciliation, let alone agree with it. But here we are discussing it as though it is a foregone conclusion. We are running with reconciliation. In another 10 years we will have a decision. In 1987 we had a promise that we would have a compact. In 1988 – we had a treaty. It is written there on a bit of paper. In 1992 – we got reconciliation. And that has given us 10 years to talk about it – what are we going to have? So I am saying that if we are going to start pushing things, then we have got to be serious about it, and we are going to be together. And that is the main thing, we are

going to have to be together. Because at the moment, we have got more factions than the Labor Party. We have got to start getting together and start to discuss things in a realistic manner. But we have not even discussed reconciliation and I think it is about time that we got together and started discussing these things in a real manner. We need to take it back to our people, and our people have to be informed and make informed decisions.

Josie Crawshaw: My concern is the continual process that has even been happening in the Aboriginal agenda of how things get up. There have been quite a few people who were against ATSIC. A lot of people did not agree with it. Whether we like it or not, there are only a few substantial Aboriginal organisations in this country that actually hold the weighting of what direction any policy has gone in this country in at least the last 10 years. It has been those organisations that have accepted ATSIC in principle. How did that process happen? They went around and we had two hour meetings. They have been working on this for years to be able to get that process working and to have money. We get a chance in two hours to try to decide whether we want ATSIC. When they hear this, we come to the point where it sounds like a good idea, and accept it in principle, then we have got it. Here we go again with the reconciliation process. I think the key organisations have to accept that they have led the direction of policy debate.

Now if we are really honest and want to be fair about getting a whole lot of viewpoints, we keep saying we all got to be one people. But I think it has been designed that key people that have a different view – those Aboriginal people that have a different view about the process by which we get self-determination – are always denied access to forums like this. We are not on the key agenda. You recognise non-Aboriginal people as being experts and you give them a forum and yet there are people like Michael Mansell who we have known for years who has not strayed from the sovereignty issue. He is not a silly man. I do not care what you say. It is why the media have actually castrated that man because he is talking some sense possibly. They have not been able to win him over to their side, so they have got to annihilate him. Now why is it that a man like that, who is actually writing a book, who has researched morals over the world, cannot get a position up there to actually present us with another view? Why are we always denied that? You talk about getting together all of the so-called leaders of this country that are leading this reconciliation process. If they go to the negotiation table, they might not have all our support.

Unidentified speaker: Could this conference support this issue of sovereignty? Could this matter be impressed throughout the discussions with the reconciliation process? I think the question of sovereignty is the number one issue, and that issue must be prioritised, and must be kept in mind when we are talking with the government, negotiating. Not them telling us, but negotiating. For too long we have been always been told what to do, but now when that issue of sovereignty in the Torres Strait in 1988 was raised, the shit hit the fan in Canberra, and money was thrown to the Torres Strait, because for too long the Torres Strait had never been given anything. It had nothing to share, nothing. I have been up there and I have seen conditions were bad. Now when they talk about sovereignty the money was given to the Torres Strait Islands, $25 million. That is still not enough.

What I am saying is this conference should support the issue of sovereignty. The principle is still there, the people want it, and it has never been taken away from the Aboriginal or the Islander people.

Unidentified speaker: The agenda for what is happening to Aboriginal people, specifically here in the Northern Territory, but certainly spreading outwards, must now be firmly taken control of by Aboriginal people. In other words, things like the constitutional conference. Instead of Aboriginal people being invited along to speak at it and maybe get their points of view up beside everybody else, there should be a format where their views are put automatically into the constitution in the shape and form that they so desire, and they so wish to happen. A negotiation process could take place, but more than likely it should be meeting the needs of Aboriginal people in taking control over their own lives.

Nugget Coombs: I would like to refer to one matter which arises from the question of Aboriginal ownership of things related to the land. There is one particular aspect of that, that is who owns the wildlife and other creatures that live, like we do, on the land. This is becoming a very important issue. For instance, the Commonwealth government last year passed a piece of legislation which gave patent rights to a Japanese company, which had helped finance some research into the reasons for deterioration in the numbers of koala bears. It emerges that koalas are subject to chlamydia – I think the name of the disease is – which is threatening to eliminate them altogether. As a result of that research it is now believed that chlamydia can be brought under control and therefore koalas can have a future on the Australian continent as well as a past.

That is a very interesting development and as a result of that legislation, that Japanese company will have property rights in koala bears which are now immune as a result of that research.

That is perfectly fair, but, who owns the koala bears? Did the people who conducted that genetic engineering work, did they consult Aborigines about whether that engineering should be conducted on the koala bears? And, who should get the benefits? I think it is a fine thing for people who conduct valuable research to be rewarded by some share of the proceeds, but it is not fair for that to result in the loss of the title to the basis stock which was genetically engineered.

That may sound a very remote kind of possibility. This kind of activity of operating on human and living creatures may in some way be beneficial, but it should not be used as an excuse for taking the wildlife property rights of the continent away from its proper owners. I do not mind, and I do not think that Aborigines would mind, the results of those things being shared, but I think it is a very important principal, that just as Aborigines have the fundamental title to the land itself and to what is under the land, that they also have a fundamental title to creatures which live with us along the top of it.

Marcia Langton: I am sure that everybody who is involved with dreamings for different creatures would agree with that. I do not know if there are any koala dreaming people left around the country, but I have spoken to Aboriginal people who are very worried about that koala issue and they regard the deforestation programs as equally responsible for the demise of the koala and certainly the woodchipping industry does not speak to Aboriginal people either.

The hare-wallaby project in central Australia is another attempt to keep a wildlife species going, but it involves Aboriginal traditional knowledge and one of the things that has come up again and again is the indigenous copyright issue. I know that indigenous people here are worried about copyright on indigenous knowledge and it has been raised elsewhere in the world and I understand that several researchers are trying to come up with some positions on copyright on indigenous knowledge belonging to indigenous people. As for traditional art and design and the actual species themselves, it is clear from this conference that the indigenous view is that they are owned in a sense, that I think you understand, by indigenous people.

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ABORIGINAL POLITICAL ECONOMY IN THE NORTHERN TERRITORY TODAY AND TOMORROW

Greg Crough, Senior Research Fellow, North Australia Research Unit
(seconded to Geography Department, Sydney University, January 1994)

When you look at Aboriginal issues there are two sides to them. One when Aboriginal people are very visible, when they are talked about a lot. They are criticised, they are very public, they are in the media all the time, criticised by government ministers, criticised by large companies. On the other side Aboriginal people are often invisible, you do not see them. The people sitting out in the communities quite often are completely forgotten, no-one talks about them.

One of the most common things that you hear, particularly from government ministers, is how Aboriginal people undermine development. Traditional owners are criticised for purchasing pastoral stations. Government ministers say that this is going to undermine the entire pastoral industry of the Northern Territory. I was reading in the Western Australian Hansard recently that the purchases of pastoral stations by Aboriginal people were criticised because it was going to undermine the pastoral industry of the Kimberley region, as though it was not bad enough already. There really should never have been a pastoral industry in that part of Australia. There should never have been a pastoral industry in large parts of the Northern Territory. But it does not stop the debate going on. As soon as an Aboriginal person or an Aboriginal organisation buys a cattle station, the whole pastoral industry begins to be threatened by it.

We see it with mining. Aboriginal people and traditional owners are continually criticised for exercising the rights that they have under the Land Rights legislation. Aboriginal people in Western Australia and Queensland do not have those rights, but have the example of the Territory legislation continually used against them. The mining industry continually says we would never want to introduce legislation that now exists in the Territory into Western Australia and Queensland.

The Territory government has put out some regional economic development plans. They put one out for the Barkly region, around Tennant Creek, one for the Katherine region and they are presently doing one for Alice Springs. In all those areas, Aboriginal people are the majority of the population. There is hardly any mention of Aboriginal people in those reports, and yet they are talking about economic development of a region that is comprised significantly of Aboriginal people. The Western Australian government put out the Kimberley region report. Many of the people in that region are Aboriginal people, but Aboriginal issues are barely mentioned all through that report. Yet the report is about land use, resource

development, all issues that are important to Aboriginal people. This shows that Aboriginal people have been forgotten about. But they are not just forgotten about because of an accident. It is a deliberate attempt to keep some of these important issues out of the national agenda, and off the political agenda.

The Commonwealth government has just recently released a Northern Australian economic development strategy. There was virtually no Aboriginal input into that. The only time it talks about Aboriginal issues are as social issues. Economic issues are the things that it focuses on. It talks about Aboriginal people not being part of the economy of Northern Australia. Well, where is the money that is spent by Aboriginal people, where does that go to? Who benefits from the money that is spent on housing and other construction activity in communities? Does that not have an economic impact? What about the businesses that Aboriginal people run, the community stores, the airlines, the shopping centres? Does that not have an economic impact in Northern Australia? Of course it does, but the Commonwealth government has just released a major strategy document that says that Aboriginal people are not part of the economy of Northern Australia. In fact the report says that it will not deal with Aboriginal issues except for the way that they impact on the funding arrangements. That will be dealt with somewhere else by a social policy team.

The misconception that many of you hear about is the use of taxpayers dollars. Taxpayers dollars get wasted by Aboriginal people, they sit under the trees and drink taxpayers dollars. A couple of years ago the Central Land Council said to us, 'but don't Aborigines pay tax?' What about the tax people pay when they fill up the Toyotas, what about the tax on everything that they buy in the community stores. Just recently we looked at how much tax is on cigarettes. In five Arnhem land communities people paid more than $450 000 just in cigarette tax. Now there are 60 large Aboriginal communities in the Territory, which gives you an idea of how much tax is being paid. But it is never talked like that. The only taxpayers that seem to exist in northern Australia are the non-Aboriginal people. They do not sound like Aboriginal taxpayers when they talk about taxpayers dollars being wasted. When the Minister talked about the introduction of power and water charges in communities in the Northern Territory, he talked about taxpayers dollars. I did not hear him mention Aboriginal taxpayers running their own services.

Where do all these taxpayers dollars come from? Some of you know that in the Northern Territory the government receives a very significant proportion of its funding from Canberra because of the Aboriginal population. Every year the Territory government goes to Canberra, puts in its submissions – hundreds of pages – saying, 'Look at the Aboriginal population we have, 22 per cent of the population, health problems, social problems. We have got schools to run for those people, we have got to run clinics for those people. We need funding from Canberra to do that.' The government receives about five times as much money per head as any other state in Australia, and a large amount of that money is because of the Aboriginal population and its social and economic characteristics. But it is funny when those dollars come across the border, all of a sudden they become Northern Territory taxpayers dollars. There are not that many taxpayers in the Northern Territory to account for all of the money that the Northern Territory government spends. They never talk about that, and in fact when people from the communities said: 'Can you please explain how the Grants Commission assesses the Northern Territory's funding, can you please explain to us how the funding comes from Canberra', the initial response was 'What funding

from Canberra? This is Territory taxpayers dollars that we are spending on you.' Slowly the story started to come out about the way the Territory Government was funded.

Now in Western Australia and Queensland it is more complicated because Aboriginal people are a smaller proportion of the population; it is not so obvious there. In Western Australia, the Western Australian government basically accepts no responsibility for Aboriginal people anyway so its level of spending and its funding from Canberra is much smaller than it is in the Territory.

The final thing that I wanted to mention is about Aborigines and local government. As you know the Royal Commission highlighted the problems that Aboriginal people have in lack of service delivery from local governments. In Western Australia and in Queensland the funding of many local governments is significantly influenced by the Aboriginal population living in the shires, and yet report after report has shown virtually no service delivery from local governments. In the Northern Territory the situation is different in some respects because there are Aboriginal local government bodies in the Territory. But it has been a struggle, as all of you involved in councils would know, just keeping those organisations going. Last year we found out that the Territory government decided not to pass on local roads money to the Aboriginal councils in the Territory. The Commonwealth actually had to amend the local government legislation to force the Territory government to pass that funding on to councils, and it is going to happen this year.

One of the key points about Aboriginal issues – political and economic issues – is that when Aboriginal people impact on mainstream society, such as, for example, when they are drunk out in the street or involved in violence, they become very visible. But when Aboriginal people are living in remote communities with no water, with poor housing, they become very invisible and are kept that way.

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THE FUTURE OF THE KIMBERLEY

Peter Yu, Kimberley Land Council

The purpose of this address is to provide some background to Aboriginal political development in the Kimberley and to describe a model for the practice of self-determination that has been generated by Kimberley Aboriginal people. As this conference has so clearly shown, we have new opportunities for action presented by the Mabo decision. The constitutional discussions that are taking place and the opening up of possible courses of action with respect to the Commonwealth Grants Commission.

However, on the ground in the bush and in communities where people are still trying to get access to land and some basic services, there may not be much knowledge of these opportunities. Part of the work that the Land Council and other Aboriginal people in the Kimberley had before us is to broaden people's access to information so that political options for action may be better pursued.

At the same time, it is important to stress at the outset that the single most significant political issues in the Kimberley, and arguably for all Aboriginal and Torres Strait Islander people at the moment, is of course the Mabo decision and its implications for indigenous land tenure.

The last big hope for land rights for us in the Kimberley was when the Commonwealth promised to pass a national law. In Western Australia when we had the Seaman Inquiry. As we all know, though, in 1985 the Labor government in Western Australia caved in to the arguments of the mining industry and continues to do so to this date. The only thing that emerged out of that was the Aboriginal Community Development Program, which was some money for capital and infrastructure in Aboriginal communities. It lasted for five years.

In many cases this is just a little security over what Kimberley communities term 'Matchbox areas' over their country. The strongest form of title currently in Western Australia is an A-class reserve, which means that it has to be proclaimed under the Land Act. Initially, after 1986, the government promised 99 year leases with entry permit conditions to be applied for the communities. However, these days the government in Western Australia is offering 21 or 25 year special purpose leases with no control over access by the Aboriginal community by traditional owners. So, it seems that sometimes the bureaucratic processes which people have to navigate to get land and resources have zapped our energy.

Although we have made little ground on getting land rights into law in the 1980s, battles have been fought and significant changes have been initiated and gains have been made in other areas. Aboriginal people now own about 35 per cent of the pastoral properties in the Kimberley. At a recent conference organised by the State

Agriculture Department titled 'Winning Back the West' held at Fitzroy Crossing, a number of Aboriginal pastoral properties were praised for the work they were doing on land regeneration and sustainable development. The number of Aboriginal owned enterprises in the Kimberley is also increasing. Supermarkets, caravan parks, a pub, a building company, a roadhouse, an airline company, these are some of the Aboriginal enterprises operating in the Kimberley. And, recently in Kununurra the Miriwoong people have decided to move into agriculture and have taken up the lease of the Ord River irrigation area. There is of course the emergence of Magabala Books which is an Aboriginal publishing company in Broome. It is helping to keep our culture and language strong. Of course the Kimberley is well recognised for its art work.

We have seen people being taken up, people pushed to the fringe, people brought back to town, living around the town waiting for welfare, wasting their lives, and losing their future. Today is a different day. We have got organisations now, strong organisations, we can come together to support each other.
(Peter Yu, 2 October 1992)

Our dispossession and displacement demands organisation and collective action. At the Crocodile Hole meeting which was held last year in September, organised by the Kimberley Land Council, someone talked about it like this:

> We have seen people being taken up, people pushed to the fringe, people brought back to town, living around the town waiting for welfare, wasting their lives, and losing their future. Today is a different day. We have got organisations now, strong organisations, we can come together to support each other.

As in other parts of Aboriginal Australia, our organisations are really important. In the Kimberley we have a network of resource agencies which play a major part in our lives. There are seven of them which are based in the six major towns of the Kimberley and there is also one at Turkey Creek. The resource agencies are service organisations. They help people with doing their books, they help communities negotiate for services, they organise training, they get money from ATSIC or DEET, they administer CDEP and there is a whole range of other responsibilities that the resource organisations have.

Some have also played a significant role in land negotiations, particularly at the times when the Land Council has not had much resources or money. As well as the Land Council there are also other regional organisations important in the Kimberley, like the Kimberley Aboriginal Law and Culture Centre, the language centre. There are Aboriginal medical services in Kununurra, Broome and Halls Creek. Media groups are established and are broadcasting from four of the six towns.

What I have been wanting to stress here is that there is a strong network of Aboriginal organisations of which the Kimberley Land Council is a part. It is in these local organisations that issues to control are teased out, fought over, developed and understood. What we are trying to do in the Kimberley is to build on local

understanding of the issues of control and power. Increasingly, this is being pursued through community building processes and battles over government service delivery. The Land Council over the last couple of years has been directed towards building a regional strategy for Aboriginal self-determination in the Kimberley. What we have been doing is focussing on the kinds of arrangements needed to promote Aboriginal control and independence centered on Aboriginal land and cultural rights. As part of this process, we organised a three day regional meeting at Rugun community (Crocodile Hole) in East Kimberley. Aboriginal organisations and communities in the Kimberley were joined by shire councils and some government departments, and we workshopped a lot of these issues that I have mentioned.

We have also been involved in a fairly extensive round of consultation with people over the recommendations for the Royal Commission into Aboriginal Deaths in Custody. Both these processes were about providing information and cementing ideas, and there are a couple of written reports which have emerged as a result of those meetings. Together these documents provide a comprehensive view of the interest and aspirations of the Kimberley people.

The reports that the land councils have been involved in, Crocodile Hole and the Royal Commission Consultation process, show quite clearly the demands coming from the communities and organisations. These demands are becoming more increasingly sophisticated. Community people are still talking about how they want their schools and other services to run. Communities are talking about having three days Kardiya school and two days Aboriginal school. People are also talking about how to get funding sorted out so there is not always so much confusion and humbug about money.

The question of land remains central to what we in the Kimberley are after, and that is why Mabo is so important for us. It returns the argument of self-determination to its real meaning and that is about the right of a dispossessed people to their country. Though issues of economic independence are important for self-determination, the primary argument about land remains the basis for any long-term success. Self-management, community development have to be seen in this context. I quote John Watson our Chairman who said at the conference that: 'The land comes first, from there you get your culture and your language.' Kimberley Aboriginal people have gained strength and power from the victory of the Torres Strait people and especially the people of Mer. The KLC is committed to organising nationally with Aboriginal and Torres Strait Islander organisations and their people across the country. At the same time we have the struggle to get the resources to build our own organisation in our communities in the Kimberley. The Kimberley Land Council is developing a proposal for a Kimberley Aboriginal forum made up of the executive committees of Aboriginal resource centres, ATSIC regional councils and the KLC. This proposal is still very much in its early stage and part of it comes from discussion which has taken part within the ATSIC regional council areas in the Kimberley itself in terms of formation of a Kimberley executive. This proposal is a further extension of that.

All these organisations have elected representatives making up their committees. The KLC executive is currently made up of people from the eight Aboriginal land areas in the Kimberley as well as representation from the resources agencies. Together with the ATSIC regional councils, the forum will provide a representative structure that

takes into account the diversity of Aboriginal society in the Kimberley. The forum would be responsible for developing a framework of Aboriginal self-governing organisations based on a charter that outlines the interests, aspirations and rights of Aboriginal people. The forum would be directly accountable to Aboriginal people and their organisations and would ensure that they are intrinsically involved in the process of developing the framework and its charter. The framework and charter would address the specific areas that Aboriginal people and organisations themselves have indicated they wish to gain greater control and responsibility over. It would be about self-determination, with the definition of that being by the Kimberley people. These processes will be helped by the community building work which is currently happening in the east and the west Kimberley and we are going to be doing more regional research with an Aboriginal economic development study.

In the end the question of unity is central to the ultimate achievement and we ourselves in the Kimberley have to look at our own situation and come to understand the differences and to capitalise in a constructive way on those differences. Although we can talk about unity being important, we cannot sit around and navel-gaze all day.

I will finish off by quoting the Kimberley Land Council Chairman who said this during the consultation on the Royal Commission recommendations:

> I hear my people, I know they are being taken away from their country. Self-determination is a very big word, people are frightened to get up and fight, but we have got to stop them bastards jumping the fences too, or they will get away from us. We need to make sure of our right to self-determination. If someone breaks that right there should be a court case, otherwise they have still got their hand over you. That right to self-determination should be law. With Mabo we have won the court case, now we have to fight together to make the law.

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TOWARDS A CONSENSUS?

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Present realities

1. Ideas, energy, practical knowledge, and determination are in generous supply at the grass roots level among the indigenous peoples of Australia today.
2. The *Mabo* decision provides hope for a new start in indigenous-white relations.
3. There is a widespread feeling of frustration among indigenous people with government policies, processes, projects, and programs which concern them.
4. There is an indigenous demand for new strategies and additional powers, which will provide for the increasing control by indigenous peoples of the issues that affect their lives.
5. Unlike Australia, other governments in the 'first world' have accepted indigenous rights, resource management roles and self-government as an integral part of their national agenda.

Opportunities today

6. There are significant opportunities for policy change and political recognition within Australia. These include:

- the Reconciliation Process;
- the Constitutional Review Process to 2001 AD;
- land rights policies in the wake of the *Mabo* decision;
- Australia's role in the United Nations International Year for the World's Indigenous People, 1993;
- Australia's commitments to indigenous development rights and roles agreed at the UNCED Earth Summit in Rio, 1992;
- increasing cooperation and information sharing among indigenous organisations and individuals on issues of common concern.

7. There are international opportunities to improve indigenous policies within Australia by means of:

- Aboriginal and Torres Strait Islander participation in world conferences, conventions and organisations, especially those dealing with indigenous rights and environmental issues;
- contacts and cooperation between Aboriginal and Torres Strait Islander peoples and overseas indigenous peoples on parallel problems (eg, marine strategies, creation of indigenous regional governments, social and health issues);

- information campaigns abroad in support of indigenous needs here at home;
- use of international forums and tribunals to gain official overseas assistance and support where necessary in changing Australian policies and influencing decisions.

The means

8. In order to take advantage of opportunities there is a need for change at both local and regional levels in the following:

- full use of available local powers and programs to achieve greater grassroots strength, unity, and identity;
- greater local support for both traditional and contemporary education and training of young people;
- support for representative spokespersons and leaders who can deal with government, industry, and other outside interests;
- strengthening of political identity in dealing with governments and others outside one's home area or region;
- improving the flow of information into the community on issues and policies.

9. For indigenous organisations working on behalf of local indigenous people in Australian society (eg, Island Coordinating Council, Land Councils), immediate needs may include:

- preparing regional development principles, objectives, and strategies covering political, environmental, economic, social, cultural, and service needs;
- gaining recognition by Australian governments of indigenous political institutions (eg, Island Coordinating Council, Tangentyere Council);
- seeking constitutional, legislative, and policy changes at the highest levels of government in addition to gaining improvements in local and regional level policies and programs;
- developing active international cooperation and information – sharing networks with other indigenous peoples, especially in 'first world' countries similar to Australia, in neighbouring South Pacific island countries, and in international indigenous agencies/organisations (e.g., World Council of Indigenous Peoples);
- obtaining indigenous governing and service delivery powers in practice and in law.

Long-term goal

10. A truly reformed Australian Constitution for 2001 must include recognition of the regional and representative political institutions of indigenous peoples as governing bodies in their own right with the means to maintain and enhance indigenous cultures and ensure performance of their responsibilities to a level of social outcomes equal to those of other Australians.