“International Law is Law”

International law is law, will be continually argued in relation to the recognition of Indigenous peoples in the Australian Constitution. Indigenous peoples will first be discussed from the context of International Law. Indigenous Peoples will then be discussed in light of Australian Law. International Law is prominent in order that Indigenous persons, on the values and determination including social inclusion, shall need to be recognized into the context of Australian Domestic Federal laws.

The International Law in Recognition of Indigenous peoples sets a legal remedy, this requires the determination to get it right for the recognition of Indigenous Peoples in the Australian Constitution. The many external legal contributed factors combine the many provisions, including the United Nations Declaration on the Rights of Indigenous Peoples, The Charter of the United Nations, The International Court of Justice , The United Nations Covenant on Economic, Social and Cultural Rights (UNESCO) and the United Nations Covenant on Civil and Political Rights .

The rights and traditions of Indigenous peoples through the principles of International Law allow Aboriginal Australians to practice their culture and traditions on land in all nations. Another emphasis is stating that this applies to all Indigenous peoples throughout the globe. The significance of Aboriginal Culture on land is the inclusion of the many Indigenous Nations throughout the land of Australia.

To establish the argument, that international law is law, the initial aspect of the General Assembly for the UN, is outlined as a guide for the principles and purposes of the Charter for the United Nations, assuming, that the fulfilment is obliged by the States in accordance with the Charter. This further recognizes the need to urgently respect the rights of Indigenous peoples and to respect, as affirmed in treaties, agreements with the keeping in mind, a constructive arrangement with the States. Alternatively another emphasis shared would be the principles of the International Customary Law aspect that includes the Westphalian Principle and Sovereignty entity.

The importance to the recognition, is the respect for indigenous knowledge, contributing to an equitable developed management plan for the Environment, based on the cultures and traditional practices. This acknowledges the affirmed fundamental importance for the right of self-determination, based on the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights including the Vienna Declaration and Programme of Action. By virtue, this involves all peoples, by which they are freely determining their political status, to enabling them to freely pursue their economic social, and cultural development.

An importance accordingly, is that indigenous individuals through international law are entitled without discrimination to all human rights. This confirms to recognizing and reaffirming

indigenous peoples, through collective rights, that are indispensable for their existence, well-being and integral development as peoples. The context further stipulates the Rights of Indigenous Peoples by 46 Articles, to re-affirm the obligation by states, which is the essential requirement. Australia signed the Indigenous Peoples Signatory in 2008 under the Prime Ministerial-ship of Kevin Rudd, including Jenny Macklin the then Federal Minister for Aboriginal Affairs.

Relevant articles are important, confirming essentials, outlining the legal remedies towards cultural/hunting and traditional rights. The importance, is of importance, that the Charter of the United Nations, the Universal Declaration of Human Rights, and Internal Human Rights Law, provides the given right and full enjoyment for Indigenous Peoples to receive the fundamental freedoms as recognized. To establish due recognition for indigenous peoples, laws, traditions, customs and land tenure systems, is to adjudicate, and recognize the rights of indigenous peoples pertaining to their lands, territories and resources. They have the right to participate in this process to establish and implement a fair, independent, impartial, open and transparent process, giving due recognition.

This adds to the very right to promote, and to develop by adding to maintain their institutional structures. This sets in place due to their existence their distinctive, customs, spirituality, traditions, procedures, practices and in cases, where they exist, customs or juridical systems in accordance with international human rights standards. Indigenous people through constructive arrangements, including treaties, they have the right to the recognition, observation and enforcement of treaties. Successors can also have the States to honor and respect such Treaties. Due to the obligation of the Declaration, the diminishing, or the elimination, of the rights of Indigenous Peoples contained in Treaties, all agreements and constructive arrangements must be kept.

The Article 37 within the UN Declaration for Indigenous Peoples outlines the Convention Treaties including the International court of Justice. The Vienna Convention on the Law of Treaties is the main instrument that regulates Treaties. The object of a treaty is to define and relate to how treaties are amended, made, interpreted, and how they operate and are terminated. It does not aim to create specific substantive rights or obligations for parties – this is left to the specific treaty (i.e. the Vienna Convention on Diplomatic Relations creates rights and obligations for States in their diplomatic relations)

Domestic Laws in Australia or the Federal/State Judicial Systems can be challenged, as to its validity. It has no legal remedy in the representation of Aboriginal Australians to include the traditional hunting and gathering rights, including Customary Laws. The Indigenous People's mentioned in State and Federal laws but not recognized, as in the Constitution of Australia, could cause an Unconstitutional outcome in its present form.

The final solution to amalgamate that 'International Law is Law', and to demonstrate that the Australian Domestic Federal Laws is currently under review. The case of KARPANY v DIETMAN [2013] HCA 47 regarding the High Court's decision, made it very clear on the subject of native title rights, in relation to activities, then, creates rights or duties that a law upon,

that pre-dates, the Native Title Act, shall not be inconsistent and cannot not be extinguished with the land, relating to those native title rights, unless a prohibition to clearly extinguish those rights, with a clear statutory intention. Under section 211 the defense also has a broad application. In relation to the defenses met and applied, native title holders shall not need to obtain a State or Commonwealth License or of similar authorization, if they are exercising their native title rights to hunt, fish gather, or to undertake, spiritual or cultural activities. The consideration will apply to involved State and Territory Laws.

The creation of the South Australia Act 1834 was enabled by the provisions from the Letters Patent. In relation to the defining of the boundaries, they went beyond the strict provisions of the Act to signify a point to guarantee the rights of 'any Aboriginal Natives' or their descendants to lands they 'now actually occupied or enjoyed'. The Letters Patent set such a precedent that enabled the provision for the South Australian Act 1834, on fact, that it was sealed by the King of England. It cannot be amended.

Further evidence as to pursue a Treaty process with Aboriginal Australians brings to surface the 'Pacific Islanders Protection Act 1875' Section 7.

A Mr Michael Anderson a Co-Founder of the Aboriginal Tent Embassy on the lawns of the Old Parliament House (1972), an Aboriginal Activists, a University Lecturer on Aboriginal Studies and Aboriginal Politics at various Australian Universities came across information relating to Sovereignty. Mr Michael Anderson had taken the privilege to attend the Office of Parliamentary Counsel in Whitehall (London). Through researching the official record of the original Pacific Islanders Protection Act 1875 that was passed at that time.

The archived Pacific Islander Protection Act 1875 in London at Whitehall states section 7, I quote;

"Nothing herein or in any such Order in Council contained shall extend or be construed to extend to invest Her Majesty, her heirs and successors, with any claim or title whatsoever to dominion or sovereignty over any such islands or places as aforesaid, or to derogate from the rights of the tribes, or people inhabiting such islands or places, or of chiefs or rulers thereof, to such sovereignty or dominion, and a copy of every such Order in Council shall be laid before each House of Parliament within thirty days after the issue thereof, unless Parliament shall not be in session, in which case a copy shall be laid before each House of Parliament within thirty days after the commencement of the next ensuing session".

The relevant Section 7 confirms in this Act provides the recognition of titles and dominion to waters, lands and natural resources therein from 1875 onwards, this potentially creates a legal claim for all governments of Australia. The trip initiated by Mr Michael Anderson was for the purpose to liaise with politicians and to locate the original documents surrounding the 'Pacific islanders Protection Act 1875'. Speaking with parliamentarians and the law-makers currently presiding in the UK Parliament, confirmed that an Act is supported by an Order in Council, is Law and that the Australian Colonial Laws coming from England at that time, is identified as the principal Act, this being the 1872 Pacific Islanders Protection Act. The English confirms, that

this remains Law within Australia today. This is confirmed through the Statute Law (Repeals) Act 1986, such provides a saving clause through the entitlements to the Act as Chapter 12:

Quote; “Section 2. (4) Subject to subsection (3) above i.e. the Dentists Act 1878 and the Medical Act 1886 this Act does not repeal any enactment so far as the enactment forms part of the law of a country outside the British Isles; but Her Majesty may by Order in Council provide that the repeal of this Act of any enactment specified in the Order shall on a date so specified extend to any colony”.

In relation to Michael Anderson’s research in London, it became clearer that the Monarch, Elizabeth II made no such Order in Council that was relevant to this case of law, the Pacific Islanders Protection Act 1872 was never repealed, and this confirms Sovereignty today.

The Living Marine Resources Management Act 1995 (TAS) Section 60 Part 2, an Aborigine who is engaged in an Aboriginal Activity is exempt from obtaining a Fishing License.

The matter within the Living Marine Resources Management Act 1995 under Section 3 Interpretation of Aboriginal Person, interestingly refers to the Aboriginal Lands Act 1995 s3A of who is classified in Tasmania of being Aboriginal. A Tasmanian Aboriginal Elder has a High Court and Federal Court decision in his favor of “Potent Proof” but not formally recognized by the state government of Tasmania. This in retrospect has quite significant ramifications, as recognized by the Judicial System but not recognized in the Constitution of Australia. Australia is a Signatory to the Conventions of Indigenous Peoples, but Australian Domestic/Federal Laws in relation to the Recognition of Indigenous Peoples could possibly be in Conflict with International Law.

Due to the questioning of Conflict in Laws, Australia is now obliged by law to seek change and amendments. An Obligation by Law is a necessary requirement, due to the specifics of Recognize Australia to amplify the need for Aboriginal Australians in the Constitution of Australia. If International Law wasn’t Law and not recognized as such then currently Australia would not be obliged to review the current Federal/Domestic Law Systems.

Not only International Law is apparent, but strongly provides solutions along the terms for the Vienna Convention on the Law of Treaties (1969). This solution commends a treaty that includes binding legal remedies between Indigenous and Non-Indigenous persons in Australia. This would allow a positive legal process for our economy and adding self-determination for Indigenous Australians.

Bibliography

B Cases

Karpany v Dietman [2013] HCA 47 quoted in Corrs Chambers Westgarth CORRS in BRIEF Native Title Fishing Rights – The High Court Decision in Karpany v Dietman [2013] HCA 47 (2014).

Shaw v Wolf & Ors [1998] FCA 20 April quoted in Gardiner, J Defining Aboriginality in Australia, 3 February 2003, Department of the Parliamentary Library.

C Legislation

Living Marine Resources Management Act 1995 (TAS).

Aboriginal Lands Act 1995 (TAS).

Statute Law (Repeals) Act 1986

The Pacific Islanders Protection Act, 1875

D Internet Material

http://nationalunitygovernment.org/node/7

E Treaties

International Court of Justice 1945 (Entered into force 1946).International Covenant on Civil and Political Rights, opened for signature 16 December 1966, (entered into force 23 March 1976).

UN Declaration on the Rights of Indigenous Peoples (entered into force 13 September 2007).

United Nations Covenant on Economic, Social and Cultural Rights (entered into force 4th of November 1946).

Universal Declaration of Human Rights, 1945 (entered into force 10 December 1948).Vienna Convention on the Law of Treaties, opened for signature 23 May 1969 (entered into force 27 January 1980).