

29 May, 2001

Mr K Wilkie MP
Joint Standing Committee on Treaties
Parliament House
Canberra ACT 2001

Dear Mr Wilkie,

United Nations Draft Declaration on the Rights of Indigenous People (UNDDRIP)

On behalf of our members I am writing to you in your capacity as a member of the Joint Standing Committee on Treaties (JSCOT) personally because you would be aware of the CNI (WA) submission to JSCOT in relation to the Statute for an International Criminal Court.

Our members are puzzled that the Statute could be in the negotiation process for about a decade, finalised in vague and sweeping language, ceding as it does some degree of national sovereignty and laden with the potential for future social engineering and yet be signed off by the responsible Ministers without the National Interest Analysis mentioning these possibilities.

Because of their puzzlement and concern our members have alerted me to another developing situation of which you may be unaware. Australia is an observer to negotiations, which have been continuing for a number of years in relation to UNDDRIP.

In monitoring the progress of these negotiations, our members have been told, consistently, by officials of the Department of Foreign Affairs and Trade, in effect... "Don't worry, progress is very slow... Australia is an observer and will keep Australia's interest and policies in mind...and...the Draft Declaration is a non-binding aspirational document... if adopted it would not create any legal obligations under international law."

All this sounds re-assuring but there has been a penchant by Australian courts to rely on "legitimate expectations" which follow from the signing by the Australian Government of conventions or Treaties even though such documents have not been enacted into Australian law.

Our fear is that the UNDDRIP, which might eventually emerge, will be signed by the executive government without the prior approval of the Parliament and that it will give rise to unreasonable expectations among indigenous Australians and give their leaders unwarranted ammunition to further divide rather than reconcile our nation.

Enclose is a copy of UNDDRIP, which, if it ever came into force in its present form, would be a disaster for Australia.

I should be grateful if you would advise me as to whether you share our members' concerns about this

draft document and the treaty making process generally so that I might advise them accordingly. I would be grateful for your advice as to what steps our elected parliamentary representatives might take to curb the practice of Australian officials quietly negotiating the kinds of documents such as the Statute for an ICC & UNDDRIP and then presenting them as “fait accompli” for signature by the Government.

With best wishes,

Rear Admiral PGN Kennedy AO RAN (Rtd)
Chairman - WA Committee