

The hidden artefact of the 1967 Referendum: a tragedy of significance and a serious violation of inalienable human rights

Artefact: (noun), any object made by man with a view to [its] subsequent use. The Macquarie Dictionary, 1981.

Tragedy of significance: (noun), a dramatic composition of serious or sombre character, with an unhappy ending [of significance]. The Macquarie Dictionary, 1981.

Violation of inalienable human rights: is the deliberate act by a government that violates the inalienable [something that cannot be taken away] human rights of those peoples for whom it is held responsible. It is an act that does not comply with internationally accepted human rights standards of behaviour and conduct to which that government is signatory.

This last definition, from the author, is similar to elucidations found in international law and standards of human rights law. It is important to note that a *violation* of human rights is not the same as a *breach* of human rights. A breach of human rights is where a person or persons make a deliberate act against another person or persons that does not comply with internationally accepted standards of behaviour and conduct.

This paper examines the hidden artefact of the 1967 Referendum and focuses on the serious violation by Australia of the inalienable human rights of Aboriginal peoples and Torres Strait Islanders.

The paper is divided into headings of information, beginning with the *Background to the 1967 Referendum*; it then asks the question *What was the Referendum really about?*; followed by general comments in *The Case For and the Case Against*; then *What did it mean to the Australian Government?*; followed by *So how did the discrimination start?*; then *Commentaries on the Australian Constitution*; followed by two important questions *What does it mean to Torres Strait Islanders?* and *What does it mean to Aboriginal peoples?*; then the key information heading of this paper What does it mean according to international law?; before ending with a *Summary* of six points which reveals the hidden artefact and what it means, and the question "what influence does all of this have on Aboriginal peoples and Torres Strait Islanders today?"

Background to the 1967 Referendum

We read today (from Gardiner-Garden, Dr. John. 1997) that Australia voted on two questions in 1967; both of them very significant in terms of the national interest, and taken up in national referenda. We also read that the first question was about altering the balance of numbers in the Senate and the House of Representatives while the second question was to determine whether two Sections in the Australian Constitution, which discriminated against Aboriginal people, should be removed. (Fact Sheet 150: The 1967 Referendum).

The sections of the Australian Constitution under scrutiny were:

Section 51:

The Parliament shall, subject to this Constitution have power to make laws for the peace, order, and good government of the Commonwealth with respect to:-

(xxvi) The people of any race, other than the aboriginal people in any State, for whom it is necessary to make special laws.

...and,

Section 127:

In reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives should not be counted.

This intense scrutiny of Australia's Constitution, over a period of about ten years, eventually came down to consideration for:

- a. change to section 51 (xxvi) by removal of the words '... other than the aboriginal people in any State...', and
- b. removal of the whole of section 127.

Then, after due consideration, on 27 May 1967, a two part question was asked of Australia:

1. Should the Commonwealth Government be allowed jurisdiction over Aboriginal people, a right hitherto given to the States?, and
2. Should people of Aboriginal descent be counted in the national census?

As a result of the changing political climate, this Referendum saw the highest YES vote ever recorded in a Federal referendum, with 90.77 per cent of the Australian population voting for change.

These nation-wide considerations for changes to the Australian Constitution were considered by many Indigenous and non-Indigenous peoples to be representative of the growing movement for political change within Indigenous affairs.

This paper examines the second Referendum question, and especially focuses on the issues of citizenship of Aboriginal peoples and Torres Strait Islanders in Australia. In particular, on two issues: the first "is citizenship important to Australia's Indigenous peoples and if so, why so?" and the second "is citizenship important to Australia and if so, why so?" These two issues, in different ways, surface throughout this paper.

What was the Referendum *really* about?

According to Gardiner-Gardner. 1997. the difference between what the 1967 Referendum *really represents* and *what is believed by many to be*, is far and wide. Gardiner-Garden points to widely held beliefs that the Referendum was whole-heartedly supported by both sides of politics, and claims this is not true. In fact, he says, the Menzies and Holt Governments were less than enthusiastic about altering s.51 (xxvi).

He continues saying that it is also widely believed by many that it ended legal discrimination, but in fact, as he asserts, the repeal of State legislation which discriminated against Aboriginal people was a process which was independent of the 1967 Referendum and had begun before the Referendum. However, the international definition of legal discrimination is not mentioned.

Continuing with Gardiner-Garden's account of erroneous beliefs about the Referendum, he points to the common belief that it conferred the vote but clarifies this by saying voting for Aboriginal peoples (and, presumably, for Torres Strait Islanders) had been conferred by the Commonwealth government in 1962, five years before the 1967 Referendum.

Over the years, numerous Indigenous and non-Indigenous academics have examined the 1967 Referendum. For example, in her paper Tripcony, Penny. 1997. states that "...the Referendum did not give Aboriginal and Torres Strait Islander peoples the right to vote; instead, this right had been legislated for Commonwealth elections in 1962, the last State to provide Indigenous enfranchisement being Queensland in 1965."

And Howard, Dr. Colin QC. 1997. points out the common belief of many Australians that the 1967 Referendum included the conferring of citizenship on Indigenous Australians. But as Tripcony states:

If it is accepted that citizenship status can be determined solely by [the] eligibility to vote, [which it is, in many countries] then at the time of the introduction of the Commonwealth Constitution in 1901, many of Australia's Indigenous people were, in fact, citizens. From 1829, the continent of Australia was part of the dominions of the Crown, the inhabitants of which were deemed to be British subjects. Aborigines were not considered separately at that time [prior to federation in 1901], thus [were] included in this definition. During the 1850s, the Australian states began to form [from colonies], and in the constitutions of four of those states British subjects (and therefore Aborigines) were legally entitled to vote.

What is clear from Gardiner-Garden, Tripcony and Howard, is that many Australians have entrenched beliefs about the 1967 Referendum; in what was achieved by it, and about the processes involved. For example, as Tripcony points out above, Aboriginal peoples "...were not considered separately at that time..." and being citizens as such, were therefore eligible to vote before 1901. Tragically, they lost that right when federation came about in 1901, as Tripcony points out.

"...However, Aboriginal people were later disenfranchised through the passing of the *Commonwealth Franchise Act 1902*, in combination with the *Commonwealth of Australia Constitution Act 1900*."

For all of the above, and for many other reasons, conversations about the 1967 Referendum often spark uninformed debate which clouds the reality of what the 1967 Referendum represents. The postulation of this essay paper, about 'the hidden artefact of the 1967 Referendum' and the 'serious violation of inalienable human rights' for Australia's Indigenous peoples is pitched within this uninformed and clouded environment.

The case *For* and the case *Against*

In his paper, Gardiner-Gardner points out: 'In general, advocates of the Yes vote did not see the Commonwealth as taking over the States' role in Aboriginal Affairs but as complementing it, particularly with financial aid.' Gardiner-Gardner also points out that Dr Barrie Pittock, Convenor of

the Legislative Reform Committee, felt strongly about world opinion over Australia's treatment of its Indigenous peoples:

"...Proper race relations is a national and international issue which therefore ought to be dealt with by Australia at a national level as well as at the State and local levels. Australia ought, for instance, to be able, at a national level, to ratify convention 107 of the International Labour Organisation which deals with the rights of indigenous minorities such as Aborigines."

On the other hand, few people publicly advocated a NO vote. The concerns of those who did centred on the view that the States were closer to Aboriginal needs than the more remote Parliament in Canberra, that this was a further erosion of States' rights; and that the proposal that the Commonwealth should be able to make laws on behalf of the Aboriginal people could in fact perpetuate discrimination (Gardiner-Gardner).

What did it mean to the Australian Government?

As noted by Gardiner-Garden, opposition to the 1967 Referendum was more prevalent than is commonly believed, and appeared to be based on an unusual, if not a lame, example of 'positive discrimination':

"...In 1965 the Menzies Government presented a bill which provided for the repeal of s.127. Section 51 would remain unchanged as, according to the Prime Minister, Robert Menzies:

The words are a protection against discrimination by the Commonwealth parliament in respect of [the] Aborigine. The power granted is one which enables the Parliament to make special laws, that is, discriminatory laws in relation to other races - special laws that would relate to them and not to other people. The people of the Aboriginal race are specifically excluded from this paper. There can be in relation to them no valid laws which would treat them as people outside the normal scope of the law, as people who do not enjoy benefits and sustain burdens in common with other citizens of Australia...

If the Parliament had as one of its heads of power, the power to make special laws with respect to the Aboriginal race, that power would very likely extend to enable the Parliament to set up, for example, a separate body of industrial, social, criminal and other laws relating exclusively to Aborigines."

Apart from this 'positive discrimination' held by parliamentarians of certain political persuasions, in other quarters there was not just widespread support but also a concerted and focused campaign to change this unacceptable situation for Aboriginal peoples and Torres Strait Islanders, by making changes to the Australian Constitution. The supporters included politicians such as, "...the Labor Party's Gordon Bryant. He [Bryant] became one of the most influential white activists in the ten year push for the Referendum." (ABC TV. *Timeframe*. Episode 5. 1997).

As we now know, from 1901/1902 Aboriginal peoples and Torres Strait Islanders were disenfranchised and remained this way until 1967. Gardiner-Garden (1997) makes reference to further examples of a 'positive discrimination' mindset, prevalent in the period, leading up to the framers of the Constitution choosing the path they took.

"...In the end the Constitution left little room for Commonwealth involvement in indigenous affairs and the welfare of Aboriginal people remained a State responsibility. For the next sixty years the States pursued policies which could be broadly called 'assimilationist'. Although legislation in this period varied greatly by State, in every jurisdiction it tended to touch on similar areas and in every area laws intended for the 'protection' or 'welfare' of Aboriginal people became laws which dispossessed, oppressed and alienated Aboriginal people.

For the first sixty years of Federation, most Aboriginal people were not regarded as having the right to vote in Federal elections. Before federation, both women and Aborigines had been entitled to vote in South Australia and in order to preserve the rights of South Australian women, s.41 of the new Commonwealth Constitution provided that 'no adult person' entitled to vote at State elections should be prevented from voting at federal elections. The *Commonwealth Franchise Act 1902* extended the federal franchise to women.

A proposal to include in that Act an extension of franchise to Aborigines was put, but many in the House of Representatives argued against it. Isaac Isaacs argued Aborigines 'have not the intelligence, interest or capacity' to vote and H B Higgins, argued it was 'utterly inappropriate ...[to] ask them to exercise an intelligent vote.' The proposal was defeated and, in the end, section 4 of the 1902 Act specifically denied the voting rights of 'Aboriginal native[s] of Australia... unless so entitled under Section 41 of the Constitution'."

While it is today appropriate (even if removed from the heat of the pre-1901 moment) to comment on what is clearly a discrimination against Aboriginal peoples and Torres Strait Islanders, it does not undo dispossession, disadvantage and degradation caused by ongoing discriminatory practices of successive Australian governments until (and after) 1967. But what is clear today is there are serious consequences from treating original inhabitants in a discriminatory manner, where the body of international standards and human rights we have today provide substantive evidence about that discrimination.

So how did the discrimination start?

In answering this question, many Aboriginal peoples and Torres Strait Islanders unhesitatingly point to the colonisation of Australia by the British. For them, 1778 is the unwelcome invasion of "alien peoples" that continues to this day. And when non-Indigenous Australia each year celebrates 26 January as their national Australia Day, Aboriginal peoples and Torres Strait Islanders refer to it as 'Invasion Day'.

In an extract from "Secret Instructions to Captain Cook on 30 June 1768" from "...the Commissioners for executing the office of Lord High Admiral of Great Britain..." regarding Natives of the "...Continent or Land of great extent..." that was yet to be discovered by Cook, specific instructions were given to him. Instructions, as we later find out, were not carried out by Cook.

"...You are likewise to observe the Genius, Temper, Disposition and Number of the Natives, if there be any and endeavour by all proper means to cultivate a Friendship and Alliance with them, making them presents of such Trifles as they may Value inviting them to Traffick, and Shewing them every kind of Civility and Regard; taking Care however not to suffer yourself to be surprized by them, but to always be on your guard against any Accidents.

You are also with the Consent of the Natives to take Possession of Convenient Situations in the Country in the Name of the King of Great Britain: Or, if you find the Country uninhabited take Possession for his Majesty by setting up Proper Marks and Incriptions, as first discoverers and possessors."

It is clear from history that Cook did take action, but his action was in contravention to the explicit instructions given to him, that is: "...with

the consent of the Natives to take Possession of Convenient Situations in the Country..." Cook clearly was not obedient to his instructions where the matter of the "Natives" was concerned.

It is also clear to many Aboriginal peoples and Torres Strait Islanders that discrimination began with dispossession of their territories in 1788; and that the Australian Constitution, in that respect, gave "validation" to their dispossession. The initial and then ongoing discrimination against Aboriginal peoples and Torres Strait Islanders, by Australia, was maintained through the myth of terra nullius.

Commentaries on the Australian Constitution

In 2000, the New South Wales Centenary of Federation Committee published a sponsored digital text of the Sir Robert Garran (1867-1957) "Commentaries on the Constitution of the Commonwealth of Australia." The Commentaries provide fascinating history on the background thoughts and circumstances leading to how the Australian Constitution became what it is today. Extracts from the Commentaries follow where relevant about citizenship of Aboriginal peoples in the Australian Constitution.

On page 229 of the Commentaries, reference is made to voting rights in Queensland. The framers of the Constitution had occasion to examine the Constitutions of other countries including the United States, before settling on what we had until 1967, and then after that, what we have today; in terms of who has the right to vote and whether the franchise rests with the States or with the Commonwealth. With the Constitution of the United States, the Fourth Amendment and Fifteenth Amendment brought race and colour into the position where it recognised "...a national citizenship...and forbidding discriminations in franchise legislation by the States...".

And so, the Commonwealth and States of Australia accepted franchise and suffrage, where race and colour are concerned, into their jurisdictions. In Queensland: "Aboriginal natives of Australia, India, China, or the South Sea Islands are not entitled to be enrolled, except in respect of a freehold qualification." The criteria laid down for being enrolled in Queensland excluded Aboriginal peoples and Torres Strait Islanders - if only by disadvantage. The criteria for being enrolled included: "(1) Residence; (2) Freehold estate of the value of £100; (3) Household occupation; (4) Leasehold estate of £10 annual value, held for at least 18 months, or having 18 months to run; (5) Pastoral licence of £10 annual value." It is obvious that no Aboriginal or Torres Strait

Islander person in those days, because of dispossession, slave labour and non-payment of wages, could meet the criteria.

On 21 February 1900, statisticians representing the colonies who had agreed to accept the Constitution in its then form met in Sydney. Their purpose was to determine the census count (which had only been performed some nine years before) in order to assess the number of senators that would represent each State. In this census count, the races of people disqualified by section 25 and "aboriginals" under section 127 were then made, before settling on population numbers at that time.

On page 1,077 of the Commentaries, Aboriginal peoples were counted as late as 1891, but this counting was by no means accurate or complete. For example, Queensland registered in 1891 the same count it had registered for 1881. In Victoria and South Australia, estimates were given, while in Western Australia only so-called 'civilised' Aborigines were counted.

But on page 1,076 it is recorded that Sir Samuel Griffith added a clause to the Commonwealth Bill of 1891: "In reckoning the numbers of the people of a State or other part of the Commonwealth, aboriginal natives of Australia shall not be counted." After the fourth report (from Melbourne, Adelaide, New South Wales and Tasmania), the clause came to read what it was until its repeal in 1967. The Commentaries make no explanation as to why Sir Samuel Griffith added the clause, but speculations and 'apologist' reasons continue to this day.

One such attempt at explaining why Sir Samuel Griffith included the clause is made by Howard, Dr. Colin. 1997, who coincidentally was addressing the Sir Samuel Griffith Society with a paper titled *The People of any Race*:

"...the power of the Australian Parliament to make laws for the peace, order, and good government of the Commonwealth with respect to the "people of any race for whom it is deemed necessary to make special laws". Until 1967 the power made an exception of people of "the aboriginal race in any State", but in that year the exception was removed by amendment."

Howard continues with his assertions that:

"...The original wording [of Section 51 (xxvi)] remains interesting and important nevertheless, because it clearly reflects a belief, or at least an assumption, that Aboriginal Australians are demonstrably a different race from non-Aboriginal Australians. The 1967 amendment

did not depart from this belief. On the contrary, it confirmed and reinforced it, for the effect of the amendment was to widen the power to enact laws which draw distinctions between different sections of the community on the basis of race.

...and then apologetically states that:

“Possibly because Queensland did not altogether trust the other future States not to interfere in its internal affairs, Sir Samuel Griffith at the 1891 Convention proposed a clause to give the Commonwealth exclusive power to make special laws.”

But Howard does not elaborate satisfactorily on reasons why Sir Samuel Griffith included the clause, other than alluding to the fact Queensland laboured under a shroud of mistrust where the other colonises were concerned. Finally, he ends with the assertion:

“At that date New Zealand was showing tentative interest in the mooted federation and had sent a delegation of three. When Griffiths' clause came on for debate, one of the New Zealand delegation, a certain Captain Russell, objected that, should New Zealand join the federation, such a provision would mean that the Commonwealth could make special laws for the Maoris. Captain Russell's caution, incidentally, was clearly an inherited characteristic. His parents, not content with their son bearing the proud surname Russell, made doubly sure by christening him Russell as well.

The Australians were not going to buy into Maori problems, so the clause was altered to make clear that the Maori race was excepted from the special laws power. This intervention however directed people's minds to the Australian Aborigines. There had never been any intention to remove legislative power over Aborigines from the States. So an exclusion for Aborigines went in as well. Then the Maori problem solved itself when New Zealand lost interest in federation, and the exception was removed. This left Aborigines in unduly conspicuous isolation to no purpose.

I say "to no purpose" because the entire race power question could and should have been avoided by relying on the immigration power, which follows immediately after the race power in s.51(xxvii) of the Constitution. It is clear that the race power was conceived of as a protection against outsiders. There seems to be no sound reason why the immigration power, the motivation for which centred on Chinese immigration, could not have

accommodated Polynesians, Indians or aliens of any other description without adopting the elusive concept of race.

This was not done, and so we are left with the resulting [race] problem."

This explanation by Howard does little for Aboriginal peoples and Torres Strait Islanders, who understandably would like to know the background reasons for being excluded, courtesy of Sir Samuel Griffith. What *is* certain though is that, for reasons best known to the framers of the Constitution, Aboriginal peoples and Torres Strait Islanders lost their 'British subject' status, their voting status and their citizenship equivalency in 1901, when the Australian Constitution came into force.

As mentioned earlier, the focus of this paper on citizenship includes the difference between Torres Strait Islanders and Aboriginal peoples, a difference taken up by Howard in his earlier reference to 'race'. Howard's account seems predicated on the fact that race was considered a strong factor to the framers of the Constitution, and is taken up further in a later part of his paper.

"...The definitions to which I am referring are in s.253 of the *NTA*. The expression "Torres Strait Islander" is defined as "a descendant of an indigenous inhabitant of the Torres Strait Islands". The expression "Aboriginal peoples" is defined as "peoples of the Aboriginal race of Australia". For many purposes these expressions would no doubt sufficiently indicate two groupings of people distinct from the rest of the population. Even in the context of the race power, many individuals self-evidently fall within these general descriptions. The difficulty lies with people, particularly those of mixed ancestry, who do not follow a native way of life but nevertheless identify with one of the two races."

From this account by Howard, we can see that the 'race' definition of Torres Strait Islanders is distinct from the 'race' definition for Aboriginal peoples.

What does it mean to Torres Strait Islanders?

Torres Strait Islanders are geographically isolated from Australia, the buffer zone between two international countries, and seemingly far removed from the rapidly changing pace of Australian political, social, and economic life.

The London Missionary Society (LMS) came into the Torres Strait, landing on Erub Island on 01 July 1871. They brought with them the message of Christianity that was readily accepted by islanders, since its message of a spiritual life and relationships of power structure was, in many ways for locals especially in the eastern island group, strikingly similar to their Malo cult.

Torres Strait Islanders generally have less appreciation for and general knowledge about the 1967 Referendum than do Aboriginal peoples, but far greater appreciation for and specific knowledge about their own local issues, around the greater autonomy movement; and the lesser known international decolonisation movement.

What does it mean to Aboriginal peoples?

The author of this paper does not believe it appropriate that a non-Aboriginal person comments on how Aboriginal peoples and nation feels about the 1967 Referendum. For this reason, the author employs generalisations and indications of the possible range of emotions and feelings Aboriginal peoples have about the atrocities perpetrated on them.

This heading begins with comments by Chicka Dixon, followed by historical accounts, and ending with comment from Faith Bandler, sourced from extracts from: ABC TV. *Timeframe*. Episode 5. 1997.

(Chicka Dixon) "And of course you can't neglect the point that we got through the referendum on a nine to one majority, and referendums in this country, of history, have been defeated. So ninety percent of white Australians were saying 'Get off your arse and do something for Aboriginal people' and that was worthwhile."

...and in the timeline of events leading up to the 1967 Referendum:

In the 1930s, leaders such as William Cooper, William Ferguson and Jack Patten worked tirelessly to galvanise Aboriginal people to protest for basic human rights. The first national Aboriginal protest took place while white Australia celebrated its one hundred and fiftieth birthday on Australia Day 1938. Aboriginal delegates led by Cooper and Patten met in a Sydney building, known then as the Australian Hall. They organised demands for citizenship rights and named the 26th of January 1938 'The Day of Mourning'. This might be called the first day of protest on the rocky road to the 1967 Referendum.

Among the younger leaders present at the Day of Mourning meeting was Doug (later Sir Douglas) Nicholls, a former football star who became Governor of South Australia. Also present was Pearl Gibbs, a fighter for workers', women's and civil rights. In the 1950s Gibbs was a major inspiration for a new generation of black activists, including Charles Perkins and Faith Bandler. Faith remembers that she went into the black protest movement very reluctantly; "I didn't want to give up the things I was doing," she recalls, " I didn't want my life to be disturbed . . .she [Pearl Gibbs] made me understand that I had to allow my life to be disturbed."

But there *was* an international element to the 1967 Referendum in the person of Jessie Street. The extent of that international element in terms of what Jessie Street knew about impending world-wide changes to the treatment of colonised peoples from her time with the United Nations, and how it was worked into the 1967 Referendum, may well become the subject of other research. That "international element" is taken up in the next heading.

In the late 1950s another inspirational woman appeared on the scene - Jessie Street. Street's 'silvertail' background suggested she might have been more suited to a life as a social butterfly than a social reformer, but upon returning to Australia after working with the United Nations she soon took up the cause of Aboriginal citizenship. Within a short while she had developed the idea of petitioning parliament for a Referendum to change the constitution to recognise aboriginal citizenship.

Faith Bandler recalls how Jessie Street examined the Federal Constitution and picked up the two sections that discriminated against the Aboriginal people - "as Jessie always said, it had nothing to do with voting. It had to do with getting Federal resources available to lift the people out of their misery."

And finally in this heading, comment from Faith Bandler: "I don't think aboriginal people will ever give up the battle for the right to own their own land. I don't believe they will give one inch". The belief by Faith that Aboriginal peoples (and Torres Strait Islanders) will never give up on their country is worked out every day through Aboriginal peoples and Torres Strait Islanders who seek justice and the return of their country.

It is at this point where this paper delves deeply into the 1967 Referendum hidden artefact of the 1967 Referendum, and the serious

violation by Australia of the inalienable human rights of Aboriginal peoples and Torres Strait Islanders.

What does it mean according to international law?

A. The United Nations:

In 1945 the United Nations (UN) was established, following on with the international work performed earlier by the League of Nations. The Charter of the United Nations consisting of an Introduction, Preamble, nineteen Chapters, and Declarations of Acceptance by sovereign States laid the foundation on which universal human rights have been established.

This essay acknowledges the historical fact that human rights were upgraded from a principle in the Charter to an inalienable right in the Declaration, and focuses on the hidden artefact of the 1967 Referendum; an artefact which constitutes a serious violation by Australia of the inalienable rights of Aboriginal peoples and Torres Strait Islanders.

B. General Assembly resolution 1514 (XV):

On 14 December 1960, the General Assembly of the UN in resolution 1514 (XV) established the *Declaration on the Granting of Independence to Colonial Countries and Peoples*. The Declaration (full text attached to this paper) was the formal instrument that introduced decolonisation for the 750 million people living in territories that were not self-governing, many due to abandonment by colonising powers unable to administer the territories from afar, after World War 2.

C. General Assembly resolution 1541 (XV):

On 15 December 1960, the General Assembly of the UN in resolution 1541 (XV) established the *Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 e of the Charter* and in particular, established in its Annex, the three legitimate forms of self-government recognised and endorsed by the United Nations. Full text attached to end of this paper. Article 73 (Chapter 11) sub-article (e) of the Charter reads:

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet

attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

a...;

b...;

c...;

d...; and

e. to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapter XII and XIII apply.

D. The three legitimate forms of self-government:

The three legitimate forms of self-government, enshrined in the Annex to General Assembly resolution 1541 (XV) and endorsed by the United Nations, are:

1. Emergence as a sovereign independent State
2. Free association with an independent State
3. Integration with an independent State

E. Examples of legitimate self-government:

Examples of the three legitimate forms of self-government are: Timor-Leste (formerly East Timor) the most recent addition to the United Nations of *a sovereign independent State*; Niue Island, in *free association* with New Zealand (the independent State); and Aboriginal peoples and Torres Strait Islanders under *integration* with Australia (the independent State).

F. Principle VIII guidelines for integration with an independent State:

It is the third example of legitimate self-government to which we now turn, 'Integration with an independent State', and in particular to its detail in the Annex to General Assembly resolution 1541 (XV). The Annex

contains 12 Principles and it is Principles VIII and IX that are of interest to us in relation to citizenship. Starting with Principle VIII, we read:

Principle VIII

Integration with an independent State should be on the basis of complete equality between the peoples of the erstwhile Non-Self-Governing Territory and those of the independent country with which it is integrated. The peoples of both territories should have equal status and rights of citizenship and equal guarantees of fundamental rights and freedoms without any distinction or discrimination; both should have equal rights and opportunities for representation and effective participation at all levels in the executive, legislative and judicial organs of government.

G. The sub-components of Principle VIII:

When we break down Principle VIII into sub-components, we see there are five in total:

- a. ...complete equality between the peoples of the erstwhile Non-Self-Governing Territory and those of the independent country with which it is integrated...
- b. ...equal status and rights of citizenship...
- c. ...equal guarantees of fundamental rights and freedoms without any distinction or discrimination...
- d. ...equal rights and opportunities for representation...at all levels in the executive, legislative and judicial organs of government...
- e. ...effective participation at all levels in the executive, legislative and judicial organs of government...

H. How Australia has not complied with Principle VIII:

Starting with sub-component (a), for today, it is highly questionable to advance the notion there is complete equality between Aboriginal peoples and Torres Strait Islanders to the rest of Australia, with the most recent evidence of that being the *Overcoming Indigenous Disadvantage: 2003 Report* by the Steering Committee of the Productivity Commission, for the Review of Government Service Provisions. Complete equality between colonised peoples and the dominant culture of the colonisers is, like terra nullius, a myth and has never in Australia 'seen the light of day' since colonisation in 1788.

With sub-component (b) we see the background reasons why Australia pursued the 1967 Referendum with such vigour. All of these background reasons point to the absolute requirement of changes to certain sections of Australia's Constitution, in order for it to comply with the obligations for legitimate self-government standards, according to international law. As it stood, before the 1967 Referendum, Section 51 (xxvi) of the Australian Constitution discriminated against Australian Indigenous peoples, because the Commonwealth Government could not exercise the constitutional power of making special laws for Aboriginal peoples and Torres Strait Islanders in the States of Australia; as they were empowered to do, for "...the people of any race." For Section 127, not "...reckoning..." Aboriginal peoples and Torres Strait Islanders along with all other Australian citizens as part of "...the numbers of the people of the Commonwealth..." effectively meant Australia was practicing discrimination against them. Both Sections 51 (xxvi) and Section 127 effectively meant Aboriginal peoples and Torres Strait Islanders did *not* have the same equal status and rights of citizenship as did other Australians, and were being discriminated against. The relevance about these factors of compliance, for Australia as a nation in relation to international law, is that the Commonwealth of Australia is the member to the United Nations and therefore the responsible party.

With sub-component (c) we know that the Racial Discrimination Act was promulgated in 1975 and that it was Australia's response to the *International Covenant on Civil and Political Rights* (ICCPR). But in spite of the 1975 Racial Discrimination Act, discrimination is still present in Australia; 'hidden and covert' as a result of its hidden artefact. Before the 1967 Referendum, discrimination was overt and blatantly out in the open.

With sub-component (d), while it is one thing for Australia many years after the 1967 Referendum to point to written instruments of evidence in legislation and policy, for example, the Aboriginal & Torres Strait Islander Commission Act 1989 and Council for Aboriginal Reconciliation Act 1991, and to present such forms of evidence in its quadrennial Agenda 21 Country Report to the United Nations, it is entirely another matter when Indigenous peoples do not possess the economic base for people centred and infrastructure centred development for their communities, because of policies that continued up until 1970 to "steal" the legitimately earned wages of the same peoples it is reporting on.

And with sub-component (e), effective participation by Aboriginal peoples and Torres Strait Islanders "...at all levels in the executive, legislative and judicial organs of government" is minimal at best, and non-existent at worst, for all of the reasons outlined above.

I. Is Australia obliged to report under Article 73e?:

While it is valid to ask the question "...is Australia obliged to report under Article 73e on developments surrounding its Aboriginal peoples and Torres Strait Islanders, to transmit information to the Secretary-General as Article 73e stipulates?", answering the question is difficult without first establishing certain background facts.

1. According to history, Australia was colonised "by settlement", but this is a disputed fact. A well-known counter argument against Australia being colonised by settlement is the passage of Native Title legislation in 1993, with consequent extinguishment of the myth of terra nullius. What is definite, in spite of the arguments, is Australia easily fits the description of a colonised country.
2. As noted above Australia reports through its *Agenda 21 Country Report* to the General Assembly, on a quadrennial basis, on the manner in which it manages its Indigenous populations, and on how well it conforms to its international obligations. But Australia also engaged in other 'interesting' population management techniques, for example, through the Aboriginal & Torres Strait Islander Commission (Act 1989) and Council for Aboriginal Reconciliation (Act 1991). This essay will later return to reasons why Australia engaged in ways not seemingly linked to any well-known international obligation.
3. Australia was a member of the first Special Committee of 24 on the Situation with regard to Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, appointed by the President of the General Assembly to this position in 1961 as a result of General Assembly resolution 1654 (XVI) of 21 November 1961.
4. As a member of the first Special Committee dealing with the implementation of the 1960 decolonisation Declaration and overseeing the obligations of Article 73e in General Assembly resolution 1541 (XV) it is difficult not to conclude that Australia did know about its requirements to comply with the two decolonisation resolutions. Specifically, about its Constitution demonstrating

compliance with Principle VIII of the Annex to General Assembly resolution 1541 (XV).

The facts clearly show that Australia is a colonised country. But it somehow missed out on facing the obligations of transmitting information to the Secretary-General, as described by Article 73e. Instead, reporting today through its Agenda 21 Country Report. This is a matter taken up on examination of Principle IX of the Annex.

J. Principle IX guidelines for integration with an independent State:

Principle IX of the Annex to General Assembly resolution 1541 (XV), the second Principle of interest to us in relation to citizenship, reads in two parts:

Principle IX

Integration should have come about in the following circumstances:

(a) The integrating territory should have attained an advanced stage of self-government with free political institutions, so that its peoples would have the capacity to make a responsible choice through informed and democratic processes;

(b) The integration should be the result of the freely expressed wishes of the territory's peoples acting with full knowledge of the change in their status, their wishes having been expressed through informed and democratic processes, impartially conducted and based on universal adult suffrage. The United Nations could, when it deems it necessary, supervise these processes.

K. The sub-components of Principle IX (a) and (b)

When we break down Principle IX (a) and (b) into its sub-components, we see that (a) contains two sub-components while (b) contains three.

(a),

- i. ...should have attained an advanced stage of self-government with free political institutions, so that...
- ii. ...its peoples would have the capacity to make a responsible choice through informed and democratic processes...

(b),

- i. ...integration should be the result of the freely expressed wishes of the territory's peoples acting with full knowledge of the change in their status...
- ii. ...their wishes having been expressed through informed and democratic processes...
- iii. ...impartially conducted and based on universal adult suffrage...

L. How Australia has not complied with Principle IX:

With sub-component (a) (i), the closest that Aboriginal peoples and Torres Strait Islanders have of "...an advanced stage of self-government..." "...with free political institutions..." is, for example, in Queensland, with what were 'Aboriginal Community Councils' and what still are (Torres Strait) Island Community Councils. Aboriginal Community Councils and the residents of their Deeds of Grant in Trust (DOGIT) remote communities changed in 2005 from under the jurisdiction of the Community Services Act and Regulations, to under the jurisdiction of the Local Government Act. At the date of this essay, (Torres Strait) Island Community Councils are undergoing preparation for the same change as Aboriginal Community Councils. The highest form of integration with an independent State that there is in Australia, is the States of Australia in integration with the Commonwealth of Australia. The lowest forms include, for example, in Queensland, what Aboriginal Community Councils were and what (Torres Strait) Island Community Councils are.

With sub-component (a) (ii), there is a contingency, which is clearly connected to sub-component (a) (i), as follows:

"The integrating territory should have attained an advanced stage of self-government with free political institutions, so that..."

...in sub-component (a) (ii)

"...its peoples would have the capacity to make a responsible choice through informed and democratic processes."

In other words, sub-component (a) (ii) has no force since it depends, if only in part, on the successful outcome of sub-component (a) (i). It is clear then that without the success of sub-component (a) (i), Aboriginal

peoples and Torres Strait Islanders could not have acquired the "...capacity to make a responsible choice through informed and democratic processes." of sub-component (a) (ii). As we see later, the decision for "...integration with an independent State..." had already been made for them by Australia. And this matter of integration, without their full knowledge of the change, is taken up in the following examination of the sub-components of (b).

With sub-component (b) (i), in the normal course of events applying to a country that is obliged to transmit information under Article 73e, the requirements in Principles VIII and IX of the Annex to General Assembly resolution 1541 (XV) would have begun after the resolution had been passed. But this is not what happened with Aboriginal peoples and Torres Strait Islanders. Today, no Aboriginal or Torres Strait Islander person can remember having freely expressed their wishes or of having acted with full knowledge of the change in their status in "...a responsible choice through informed and democratic processes;" such as are described in sub-component (a) (ii), that effectively moved them away from assimilation before the 1960 Declaration to integration after the 1960 Declaration. Nor can they remember since 1960 of having attained to the requirements and their contingencies of sub-components (a) (i) and (ii).

With sub-component (b) (ii), no Aboriginal or Torres Strait Islander person can remember since 1960, expressing their wishes [for integration] through informed and democratic processes. Remembering that it was not until 1962 when the Commonwealth Electoral Act enfranchised Indigenous people by repealing the exclusion clause of the 1902 Act, (Tripcony. 1997). Since the 1967 Referendum, the only opportunity that Aboriginal peoples and Torres Strait Islanders had of voting in any way remotely like that as described in sub-component (b) (ii), was in the Aboriginal & Torres Strait Islander Commission elections.

With sub-component (b) (iii), apart from elections for the Aboriginal & Torres Strait Islander Commission, which are the closest examples where it could be argued that Aboriginal peoples and Torres Strait Islanders voted on a decision for integration with an independent State, there is no event in Australia's history where an Aboriginal or Torres Strait Islander person can remember voting on integration with an independent State. In fact, there has been no impartially conducted voting based on universal adult suffrage where Aboriginal peoples and Torres Strait Islanders nation-wide have, with full knowledge of the change in their status, freely expressed their wishes through informed and democratic processes to be integrated.

M. So what *did* Australia actually do?

By all accounts, Australia made the decision for Aboriginal peoples and Torres Strait Islanders to be integrated into itself (the independent State) but did not inform Aboriginal peoples and Torres Strait Islanders of its decision; not back then, and not to this date, as far as is known. As a member on the first Special Committee that oversaw the implementation of the Declaration, General Assembly resolution 1654 (XVI), Australia was in the ideal place to:

1. make the decision for Aboriginal peoples and Torres Strait Islanders about integration with an independent State and have it accepted and endorsed by the United Nations, and
2. keep information about the requirements and obligations that such a decision demands, away from the public arena.

For example, it is extremely difficult today to find easily accessible material on Australian decolonisation in public libraries. But if Aboriginal peoples and Torres Strait Islanders had been granted their inalienable human right to make decisions about their future, as described in General Assembly resolutions 1514 (XV) and 1541 (XV), public information on how that process of integration transpired would be found everywhere. Such a profoundly significant matter as integration would have been in the public interest because it would have affected all Australians and would arguably have profoundly influenced the political, economic, and social constructs of race relations in this country.

And in another example, it would have highlighted the historical fact that Australia had chosen to acknowledge and deal with its Indigenous peoples as a race of people, rather than as a nation of peoples.

N. A serious violation of inalienable human rights

That Australia conducted itself in this manner, by making the decision for Aboriginal peoples and Torres Strait Islanders to be integrated, is postulated as a serious violation of their inalienable human rights. And possibly one that is yet to be contested in the International Court of Justice given the disadvantage and other life threatening circumstances that Aboriginal peoples and Torres Strait Islanders have experienced since colonisation, and continue to be subject to, under forced illegitimate integration.

Summary

The hidden artefact of the 1967 Referendum is integration. But it is an illegitimate form of self-government because Australia decided to impose it on Aboriginal peoples and Torres Strait Islanders without their informed consent. That decision amounts to a serious human rights violation, and is summarised in the following numbered items:

1. The 1967 Referendum was an orchestrated event. In spite of the truly noble, genuine, and entirely successful attempts at the national level by Australian Indigenous peoples and their non-Indigenous supporters in the 10 year lead-up to 1967, it was a cover-up for a hidden artefact. A cover-up for an artefact crafted within an international decolonising environment, far away from Aboriginal peoples and Torres Strait Islanders for whom decolonisation was intended to grant freedom from colonisation.

The orchestrated event occurred because of international obligations Australia had of treating its colonised peoples, which was the result of the United Nations General Assembly on 14 December 1960 passing the international *Declaration on the Granting of Independence to Colonial Countries and Peoples*, in effect, the United Nation's resolve for the decolonisation of colonised peoples in General Assembly resolution 1514 (XV).

Those obligations include especially, compliance with the guidelines spelt out in relevant principles of the Annex to General Assembly resolution 1541 (XV), of 15 December 1960; *Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 e of the Charter*.

2. On or about the 1960's, Australia made the decision to integrate Aboriginal peoples and Torres Strait Islanders to itself as the independent State, and did so without the knowledge of Aboriginal peoples and Torres Strait Islanders of its decision or of its profound consequences on their future. That decision was a deliberate breach of the decolonisation guidelines.

That decision by Australia is a serious violation of inalienable human rights requiring an ongoing intensive and costly maintenance of the

hidden artefact, the illegitimate form of imposed self-government; illegitimate because the guidelines for legitimate self-government were ignored by Australia, and in full knowledge by Australia of the existence of those guidelines.

The background reasons to Australia's international decolonising obligations for its colonised peoples to have equal citizenship status, obligations that led to the 1967 Referendum, is crucial information not widely known to the Australian public.

3. Because Australia made the decision to integrate Aboriginal peoples and Torres Strait Islanders, the 1967 Referendum was orchestrated to bring Australia's Constitution into compliance with the guidelines for the integration of colonised peoples with an independent State, guidelines that are found in Principles VIII and IX of the Annex to General Assembly resolution 1541 (XV).

In other words, in order for Australia to maintain its secret decision but still take action to correct discrimination in its Constitution, in Section 51 (xxvi) and Section 127, the 1967 Referendum was promoted to the nation without disclosing Australia's international obligations to the guidelines of General Assembly resolution 1541 (XV).

That complicity by Australia, its past and current status of imposing a population management technique, essentially an illegitimate form of integration with an independent State, constitutes a serious violation of the inalienable human rights of Aboriginal peoples and Torres Strait Islanders. Australia's actions can only be described as "invalid" in this regard by virtue of the fact it deliberately did not follow guidelines enshrined in Principles VIII and IX.

4. Presumably using its influence as an appointed member to the first Special Committee on the Situation with regard to Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, Australia was able to "hide" its serious violation of inalienable human rights of Aboriginal peoples and Torres Strait Islanders from the United Nations General Assembly.

As a Special Committee member Australia was able to avoid publicly announcing to the United Nations, and its own citizens, the decision

to make changes to its population management techniques. That is, from assimilation to integration. And importantly, it also avoided the obligation to transmit information to the Secretary-General, as prescribed by Article 73e of the United Nations Charter.

5. Australian governments continue to “deceive” Aboriginal peoples and Torres Strait Islanders (Savage, Kevin. 2004) by “...offering only 30% integration, which is a low-fat version of the real and highest form of integration...” enjoyed today by the six States of Australia in integration with the Commonwealth of Australia.

And rather than Australian governments correcting this breach of the guidelines by undertaking what should rightfully be “catch-up”, by reintroducing the requirements of Principles VIII and IX to correct the deception so as to start afresh, have opted instead to continue the subjection of Aboriginal peoples and Torres Strait Islanders to long-term subservience to an illegitimate form of integration with an independent State, albeit a domineering and deceitful State.

6. In conclusion, and for this paper to establish both relevancy and currency, the question must be asked “...is decolonisation still a requirement, for member States of the United Nations, today?” The answer to the question is that decolonisation is a two-part process, which continues to this day, under the supervision of the *Special Committee on the Situation with regard to Implementation of the Granting of Independence to Colonial Countries and Peoples*. It is an ongoing process involving (i), the sixteen Non-Self-Governing Territories who remain on the list of the General Assembly and (ii), all member States of the United Nations; the proof of that we see in the following.

In General Assembly resolution 43/47, on 22 November 1988, the decade 1990-2000 was set aside as the International Decade for the Eradication of Colonialism. From that resolution, all member States of the United Nations, within the decade, were required to dismantle colonialism within their countries. Many member States set up reconciliation processes in their countries, including:

- a) in Chile, the *National Commission for Truth and Reconciliation*, established in 1990,

b) in South Africa, the *Commission of Truth and Reconciliation*, established in 1995,

...and in the following examples of reconciliation processes, refer to the international decade 2001-2010...

c) in Cote d'Ivoire (the Ivory Coast), the *Mediation Committee for National Reconciliation*, established in 2000,

d) in East Timor the *Commission for Reception, Truth and Reconciliation*, established in 2001,

e) in Ghana, the *National Reconciliation Commission*, established in 2001,

f) in Peru, the *Truth and Reconciliation Committee*, established in 2000, and

g) in Sierra Leone, *the Truth and Reconciliation Commission*, established in 2000

Australia's response in this decade was to establish the Council for Aboriginal Reconciliation (the Council) and the Aboriginal & Torres Strait Islander Commission (the Commission). Some Australian Indigenous leaders suspected that the Council and the Commission were both designed with a sunset-clause and therefore, set up for failure; a suspicion born out of previous experiences too numerous to mention, under the jurisdictions of both national and sub-national levels of government.

The author of this paper believes the suspicions of those Indigenous leaders were founded on substance; which proved to be the case with the sun setting, in Australia, on both these institutions not long after the decade's end in 2000.

The reasons for these obligations by member States at the international level, was that the United Nations through its Special Committee sought to prepare the world for entry into the twenty-first century free from the evils of colonisation. It did not happen. And colonialism today, world-wide, is still alive and flourishing. Determined to complete their work, the Special Committee successfully passed its resolve to establish the Second International Decade for the Eradication of Colonialism, 2001-2010, through General Assembly resolution 55/146, on 08 December 2000.

For the second time, member States of the United Nations were obliged with the requirement of dismantling colonialism in their countries. So in this second decade, 2001-2010, what has Australia done to observe its obligations? Some Australian Indigenous activists believe that Mutual Responsibility and Shared Resource Agreements (SRAs), on the platform of political plurality, is Australia's response to the second international decade 2001-2010.

Validation for Mutual Responsibility and Shared Resource Agreements is found in Overcoming Indigenous Disadvantage Report: 2003; a report coordinated by Australia's Productivity Commission, and believed to be the key blueprint for national and sub-national governments to demonstrate to the world they are genuinely dismantling colonialism. The Council of Australian Governments (COAG) oversees this process in Australia.

In this regard, Mutual Responsibility and Shared Resource Agreements (SRAs) are mechanisms that perform two key functions. The first, satisfying requirements for decolonisation at the international level, is to demonstrate that Australia's obligations in the second international decade are genuinely about dismantling colonialism. And the second, satisfying requirements for its hidden artefact at the national level, is to further implement and entrench, substantiate and maintain, the illegitimate form of self-government imposed on Aboriginal peoples and Torres Strait Islanders since the 1960 Declaration.

In my concluding remarks for this paper, I return to the question, asked at its beginning; "...what influence does all of this have on Aboriginal peoples and Torres Strait Islanders today?" The answer to that question is bound up with the title of this paper, and that is:

...[t]he hidden artefact of the 1967 Referendum [is an illegitimate form of self-government, known as integration, that continues to be] a tragedy of significance [for Aboriginal peoples and Torres Strait Islanders] and [an ongoing] serious violation of [their] inalienable human rights.

For this reason alone, if not for any others, justice in Australia for Aboriginal peoples and Torres Strait Islanders is yet to be served.

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United Nations

General Assembly

Fifteenth session

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY

1514 (XV) Declaration on the granting of independence to colonial countries and peoples

The General Assembly,

Mindful of the determination proclaimed by the peoples of the world in the Charter of the United Nations to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small and to promote social progress and better standards of life in larger freedom,

Conscious of the need for the creation of conditions of stability and well-being and peaceful and friendly relations based on respect for the principles of equal rights and self-determination of all peoples, and of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Recognizing the passionate yearning for freedom in all dependent peoples and the decisive role of such peoples in the attainment of their independence,

Aware of the increasing conflicts resulting from the denial of or impediments in the way of the freedom of such peoples, which constitute a serious threat to world peace,

Considering the important role of the United Nations in assisting the movement for independence in Trust and Non-Self-Governing Territories,

Recognizing that the peoples of the world ardently desire the end of colonialism in all its manifestations,

Convinced that the continued existence of colonialism prevents the development of international economic cooperation, impedes the social, cultural and economic development of dependent peoples and militates against the United Nations ideal of universal peace,

Affirming that peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law,

Believing that the process of liberation is irresistible and irreversible and that, in order to avoid serious crises, an end must be put to colonialism and all practices of segregation and discrimination associated therewith,

Welcoming the emergence in recent years of a large number of dependent territories into freedom and independence, and recognizing the increasingly powerful trends towards freedom in such territories which have not yet attained independence,

Convinced that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory,

Solemnly proclaims the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations;

And to this end

Declares that:

1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.
2. 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.
3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.
4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.
5. Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.
6. Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.
7. All States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity.

*947th plenary meeting,
14 December 1960.*



United Nations

Resolutions adopted on the reports of the Fourth Committee

1541 (XV). Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 e of the Charter

The General Assembly,
Considering the objectives set forth in Chapter XI of the Charter of the United Nations,
Bearing in mind the list of factors annexed to General Assembly resolution 742 (VIII) of 27 November 1953,

Having examined the report of the Special Committee of Six on the Transmission of Information under Article 73 e of the Charter,¹ appointed under General Assembly resolution 1467 (XIV) of 12 December 1959 to study the principles which should guide Members in determining whether or not an obligation exists to transmit the information called for in Article 73 e of the Charter and to report on the results of its study to the Assembly at its fifteenth session,

1. *Expresses its appreciation* of the work of the Special Committee of Six on the Transmission of Information under Article 73 e of the Charter;
2. *Approves* the principles set out in section V, part B, of the report of the Committee, as amended and as they appear in the annex to the present resolution;
3. *Decides* that these principles should be applied in the light of the facts and the circumstances of each case to determine whether or not an obligation exists to transmit information under Article 73 e of the Charter.

948th plenary meeting,
15 December 1960.

ANNEX

PRINCIPLES WHICH SHOULD GUIDE MEMBERS IN DETERMINING WHETHER OR NOT AN OBLIGATION EXISTS TO TRANSMIT THE INFORMATION CALLED FOR IN ARTICLE 73 e OF THE CHARTER OF THE UNITED NATIONS

Principle I

The authors of the Charter of the United Nations had in mind that Chapter XI should be applicable to territories which were then known to be of the colonial type. An obligation exists to transmit information under Article 73 e of the Charter in respect of such territories whose peoples have not yet attained a full measure of self-government.

Principle II

Chapter XI of the Charter embodies the concept of Non-Self-Governing Territories in a dynamic state of evolution and progress towards a "full measure of self-government". As soon as a territory and its peoples attain a full measure of self-government, the obligation ceases. Until this comes about, the obligation to transmit information under Article 73 e continues.

¹ *Ibid*, agenda item 38, document A/4526

Principle III

The obligation to transmit information under Article 73 e of the Charter constitutes an international obligation and should be carried out with due regard to the fulfilment of international law.

Principle IV

Prima facie there is an obligation to transmit information in respect of a territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it.

Principle V

Once it has been established that such a *prima facie* case of geographical and ethnical or cultural distinctness of a territory exists, other elements may then be brought into consideration. These additional elements may be, *inter alia*, of an administrative, political, juridical, economic or historical nature. If they affect the relationship between the metropolitan State and the territory concerned in a manner which arbitrarily places the latter in a position or status of subordination, they support the presumption that there is an obligation to transmit information under Article 73 e of the Charter.

Principle VI

A Non-Self-Governing Territory can be said to have reached a full measure of self-government by:

- (a) Emergence as a sovereign independent State;
- (b) Free association with an independent State; or
- (c) Integration with an independent State.

Principle VII

(a) Free association should be the result of a free and voluntary choice by the peoples of the territory concerned expressed through informed and democratic processes. It should be one which respects the individuality and the cultural characteristics of the territory and its peoples, and retains for the peoples of the territory which is associated with an independent State the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes.

(b) The associated territory should have the right to determine its internal constitution without outside interference, in accordance with due constitutional processes and the freely expressed wishes of the people. This does not preclude consultations as appropriate or necessary under the terms of the free association agreed upon.

Principle VIII

Integration with an independent State should be on the basis of complete equality between the peoples of the erstwhile Non-Self-Governing Territory and those of the independent country with which it is integrated. The peoples of both territories should have equal status and rights of citizenship and equal guarantees of fundamental rights and freedoms without any distinction or discrimination; both should have equal rights and opportunities for representation and effective participation at all levels in the executive, legislative and judicial organs of government.

Principle IX

Integration should have come about in the following circumstances:

(a) The integrating territory should have attained an advanced stage of self-government with free political institutions, so that its peoples would have the capacity to make a responsible choice through informed and democratic processes;

(b) The integration should be the result of the freely expressed wishes of the territory's peoples acting with full knowledge of the change in their status, their wishes having been expressed

through informed and democratic processes, impartially conducted and based on universal adult suffrage. The United Nations could, when it deems it necessary, supervise these processes.

Principle X

The transmission of information in respect of Non-Self-Governing Territories under Article 73 e of the Charter is subject to such limitation as security and constitutional considerations may require. This means that the extent of the information may be limited in certain circumstances, but the limitation in Article 73 c cannot relieve a Member State of the obligations of Chapter XI. The "limitation" can relate only to the quantum of information of economic, social and educational nature to be transmitted.

Principle XI

The only constitutional considerations to which Article 73 e of the Charter refers are those arising from constitutional relations of the territory with the Administering Member. They refer to a situation in which the constitution of the territory gives it self-government in economic, social and educational matters through freely elected institutions. Nevertheless, the responsibility for transmitting information under Article 73 e continues, unless these constitutional relations preclude the Government or parliament of the Administering Member from receiving statistical and other information of a technical nature relating to economic, social and educational conditions in the territory.

Principle XII

Security considerations have not been invoked in the past. Only in very exceptional circumstances can information on economic, social and educational conditions have any security aspect. In other circumstances, therefore, there should be no necessity to limit the transmission of information on security grounds.