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INDIGENOUS ISSUES

Written statement* submitted by International Indian Treaty Council, a non-governmental
organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[3 February 2003]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

The International Indian Treaty Council and several of its affiliates participated in the 8th UN Intersessional Working Group on the Draft Declaration for the Rights of Indigenous Peoples December 2 – 13, 2002.

We remind the members of the Commission that during the Declaration's twelve-year drafting process in the WGIP every effort was made to accommodate views of UN experts, Indigenous Peoples and States in a true process of negotiation in which we participated in good faith. We assumed the same level of good faith from the participating States. Indigenous Peoples' organizations participating in this process, and many more around the world have endorsed the resulting current text as representing the minimum standard required for the survival of Indigenous Peoples.

IITC and other Indigenous Peoples' organizations have continued to participate in the discussions in the Working Group created by the Commission under resolution 1995/32 under the principle that international standards must be applied without discrimination, based on the equality of rights and dignity of all members of the human family. Contrary to this sacred principle, certain states continue to propose changes to the current text, which, if adopted, would seriously undermine and diminish rights in the current text that are fully consistent with existing international law and standards.

Methods of work adopted by the Working Group as agreed by Indigenous participants, the chairman/Rapporteur and many of the States have accepted the current text as adopted by the Sub-Commission as the basis of our discussions. The Working Group agreed to consider and discuss proposals for changes which deviated as little as possible from the current text, that attempt to strengthen or clarify the current text, and that uphold the fundamental principles of non discrimination and racial equality. While many states are making a sincere attempt to maintain these principles in our discussions, others continue to propose amendments that seek to undermine our most basic rights, effectively subjugating the rights of Indigenous Peoples to the vastly divergent, and in many cases blatantly discriminatory "domestic" laws of states.

Examples include the US proposal made this year to redraft Article 3, currently consistent with existing international standards affirming Right to Self Determination for all Peoples to read "Indigenous peoples have the right to internal self-determination" attempting to create a new lesser scope of this right only for Indigenous Peoples. Going even one step farther, Australia proposed to remove all reference to Self determination from the Declaration and to replace it with the term "self management" which has no meaning under international law.

As another example, during the 7th session, the Government of Guatemala advanced a proposal which it reiterated at this session, despite the opposition of a large number of Indigenous organizations of that country, to insert new language in the Declaration limiting the application of the rights it recognizes as subject to the rights of so called "third parties".

These states are clearly well aware after this many years of dialogue in which the Indigenous Peoples' firm collective position has been made clear that amendments to impose discriminatory limitations of the rights of Indigenous Peoples compared to all

others Peoples under international law can not and will not be accepted. Such proposals therefore only serve to obstruct our collective progress towards the adoption of the Declaration, and insure that consensus will never be reached.

A joint statement issued during the 8th session by the participating representatives of Indigenous Peoples, nations and organizations in honor of International Human Rights day, 10 December 2002, reiterated this position:

“We reject the erroneous allegations that Indigenous Peoples are not prepared to consider reasonable changes to the Declaration. We have always made it clear that any proposals for change should comply with the principles of equality, non-discrimination and the absolute prohibition of racial discrimination, which is peremptory norm under international law

“In this regard, Nation State members of the UN have no authority to advance proposals and positions which are inconsistent with these principles or which violate existing peremptory norms.

This is a violation of the fundamental principle that human rights are universal, and would undermine the existing rights embraced by the United Nations Charter and the International Bill of Rights.”

We have reached a very significant, and very difficult point in this process. The UN has been called upon by the General Assembly’s Declaration for the Decade of the Worlds’ Indigenous Peoples to adopt the Declaration by the end of the Decade as an aspiration goal to which we have all ascribed.

But during the past session, some states mentioned the imminent end of the Decade as a looming deadline to convince Indigenous Peoples that we should accept objectionable proposals in the spirit of “compromise” and begin “making progress” by agreeing to accept less than full recognition our rights so as to “get it done in time”.

But we cannot be held hostage to the aspirations of our own Decade. If the political will of states to accept the rights of Indigenous Peoples as equal to those of all other Peoples is still lacking, we clearly need more time for dialogue. The alternative may be to consider a new methodology other than the one we are currently utilizing. But we will not be pressured into negotiating away our fundamental human rights as Peoples under international law in order to achieve adoption of a Declaration that is less than the minimum standard contained in the current text, which could be used against us to enforce the unacceptable status quo that now exists in many states.

The IITC is prepared at this time to continue with this dialogue, but we also understand that many of our Indigenous brothers and sisters, as well as some states, do not see how this impasse can be resolved. We will need to review the situation thoroughly after the next Intersessional Working Group session in September, and at that time decide how it may be best to proceed.

In closing, in light of the serious problems with the report this year, and to further inform the members of the Commission on the position and views of a number of the Indigenous Peoples organizations participating in the last session, we provide the following joint statement from Asociación Nabguana, AIRTRUST, Big Mountain – Black Mesa Sovereign Communities, Buffalo River Dene Nation, CAPAJ, Centro de Educación Campesina de Bases de Bolivia, Consejo de Todas las Tierras, International Indian Treaty Council, Fundación para la Promoción y Conocimiento Indígena, Indigenous Woman Network, Movimiento de la Juventud Kuna, TINHINAN, and Yachai Wasi de Peru.

This statement was prepared by these organization to read at the end of the session, but due to lack of time, this was not possible. It was distributed to the participants, and is reprinted in full below:

“We continue to support the current text of the Draft Declaration on the Rights of Indigenous Peoples, as accepted and forwarded by the Sub-Commission to the Commission on Human Rights.

“We have carefully examined all of the proposals by States presented at this session and find that they diminish or impair the human rights and fundamental freedoms recognized by the original text. We have stated our positions on each proposal openly on the floor at this session.

“We acknowledge the fact that although some States are willing to accept it as it is, some States will not accept the current draft without changes or amendments. We feel the States in power hold back any significant progress in adopting a Declaration on the Rights of Indigenous Peoples that truly promises to ensure our ability to survive as Peoples.

“We feel that it is necessary at this point to return to our people to inform them of what is occurring in this process and seek direction from them as to where we can go from here.

“Our right to Self Determination is not up for negotiation. It must be made clear that Indigenous Peoples must be recognized as Peoples with the same fundamental rights as all other Peoples.

“We want to thank very much those States such as Mexico and others who have stepped forward to give us support in standing up for the rights of Indigenous Peoples. To all hard-line States that are impeding the full recognition of our rights as Peoples, we recognize and understand your reluctance to do so. When all is said and done, it all comes back to one thing, our lands, territories and natural resources. When you put money above the rights of Indigenous Peoples, the Peoples of the world will hear about it.

“We must come to a clear and transparent understanding that we as Indigenous Peoples are willing to work with the States and that we all only seek healing, justice and peace.

“There is a solution and it has already begun – dialogue. That is a step in the right direction. But at this stage, we feel that a consensus will not be reached by 2004 and that is why we cannot compromise our future and the future of our children.”
