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**THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION
TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN
OCCUPATION**

**RACISM, RACIAL DISCRIMINATION, XENOPHOBIA
AND ALL FORMS OF DISCRIMINATION**

INDIGENOUS ISSUES

Joint written statement* submitted by the Inuit Circumpolar Conference, a non-governmental organization in special consultative status and the Grand Council of the Crees (Eeyou Istchee), a non-governmental organization on the Roster

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

[11 February 2005]

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

We wish to bring to the attention of this Commission (UNCHR) the views of the Inuit Circumpolar Conference and the Grand Council of the Crees (Eeyou Istchee) concerning the intersessional Working Group (UNCHR Res. 1995/32, 3 March 1995 (herein referred to as the CHRWG)).

As many UNCHR members are aware, the CHRWG is authorized to elaborate a draft U.N. Declaration on the Rights of Indigenous Peoples. However, in December 2004, the mandate of the CHRWG came to an end without achieving what was a “major objective” of the *International Decade of the World’s Indigenous People* – the adoption of a Declaration by the U.N. General Assembly. This crucial objective can and must be achieved.

It is critical for Indigenous peoples worldwide that the mandate of the Working Group be extended by the Commission, so that a strong and uplifting *U.N. Declaration on the Rights of Indigenous Peoples* may be eventually adopted by the General Assembly. It is also important to ensure the effective operation of the CHRWG through the implementation of affirmative measures that eliminate ongoing discrimination. Currently, the regressive and discriminatory positions of certain States are blocking the successful conclusion of the mandate of the CHRWG.

In our respectful view, the 2004 session of the CHRWG attained new levels of constructive dialogue and understanding. This yielded widespread Indigenous/State agreement on many articles of the draft *U.N. Declaration*. As a result, consensus should be achievable on a substantial number of articles in future sessions of the Working Group.

It is especially significant that there is currently an “emerging consensus” on Article 3 concerning the right of self-determination – a core article for the entire *Declaration*. An overwhelming majority of representatives of Indigenous peoples and organizations currently support a “package” of proposed amendments relating to the right of self-determination that also has the support of a growing number of States.

However, there remain outstanding concerns that require brief comment here. A number of States refuse to honour their international legal obligations in the human rights context. Through unjust and prejudicial State positions, the basic status and human rights of Indigenous peoples are being undermined. Such State behavior has far-reaching implications for the *Charter of the United Nations*, international peace and security, and the international human rights system itself.

The positive obligations of the U.N. and Member States to uphold the Purposes and Principles of the *U.N. Charter* are crucial to the organization itself. The *U.N. Charter* clearly states its Purposes and Principles require actions “promoting and encouraging respect” for human rights and not undermining them. This duty is to be based on “respect for the principle of equal rights and self-determination of peoples”. These legal obligations must be fulfilled in good faith by States. In this way, the obligations of Member States under the *U.N. Charter* must prevail over those in any other international agreement. Therefore, the U.N. and its Member States have no authority to weaken our human rights under international law and thereby create double standards.

Within the CHRWG, there continue to be the biased and obstructionist interventions made in particular by certain States. Since the collective human right of self-determination is specifically included in both international human rights Covenants, States participating in the CHRWG must apply this central right on an equal basis to Indigenous peoples. Each and every State that has ratified at least one of the Covenants has an affirmative legal obligation to “promote the realization of the right of self-determination, and ... respect that right, in conformity with the provisions of the Charter of the United Nations”.

Yet some of the States in the CHRWG, including the UK, United States, France, the Netherlands and Australia, are still not willing to fulfill these legal obligations. They still refuse to unequivocally affirm that the right of “all peoples” to self-determination in Article 1 of the Covenants applies equally to Indigenous and non-Indigenous peoples.

These State positions run counter to the conclusions and observations of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights. Both these bodies have applied Article 1 of the Covenants to Indigenous peoples, including the rights to natural resources. The Human Rights Committee is using the collective right of Indigenous peoples to self-determination as a normative standard to interpret individual rights under the Covenant.

For example, UK representatives at the WGDD have suggested creating a “new right” of self-determination in the draft *U.N. Declaration* that would apply globally to Indigenous peoples. According to its latest position, the UK would restrict this new right to internal self-government.

The UK delegation in Geneva has repeatedly registered its objection to the use of the term “peoples” throughout the draft *Declaration*. The UK intends to retain this objection, until it is satisfied that the collective rights associated with the term “peoples” in the *Declaration* are fully excluded or segregated from the international human rights system.

For States to deny Indigenous peoples the status of “peoples” in order to deny them the right of self-determination would be clearly discriminatory. It would be contrary to both the *International Convention on the Elimination of All Forms of Racial Discrimination* and the *International Covenant on Civil and Political Rights*. Yet the UK and certain other States continue to maintain their positions on self-determination with remarkable impunity.

Opposition to Indigenous peoples’ collective rights

The UK, France, the Netherlands, Portugal and certain other State governments are in effect offering Indigenous peoples an unacceptable choice: Either accept that Indigenous peoples’ rights are really individual rights that may be exercised collectively, “in community with others”, or these States will continue to oppose any affirmation that our collective rights are human rights. These attempts by States to individualize Indigenous peoples’ rights directly contradict the rulings of domestic courts and international human rights bodies. In particular, our rights and titles to lands have been repeatedly confirmed to constitute the collective rights of Indigenous peoples or nations.

In Article 1 of the international human rights Covenants, it is explicitly highlighted that the right of all peoples to self-determination includes economic, social, cultural and political dimensions. As elaborated in the draft *U.N. Declaration*, our fundamental rights are also clearly of an economic, social, cultural, and political nature. These same classes of rights are addressed in the two international human rights Covenants. **In relation to Indigenous peoples, these types of rights cannot suddenly lose their human rights quality simply because of their crucial collective dimensions.**

To restrict international human rights to individual rights would only serve to assimilate or otherwise undermine our cultures, traditions, legal systems and worldviews. It would run counter to the basic principles of diversity, tolerance and equality – all of which embrace the right to be different. It would also negate a key reason for adopting a *U.N. Declaration on the Rights of Indigenous Peoples*.

Proposals from the UK and other States to exclude or segregate the collective rights of Indigenous peoples from the international human rights system should not be tolerated. Such a regressive step would severely blacken the reputation of the United Nations and its Member States. It would be contrary to existing international human rights instruments, the conclusions and rulings of international human rights bodies, and international law as a whole.

It would severely undermine the integrity of our rights, cultures and legal systems. It would create an inherent incoherency – that the indispensable collective rights of Indigenous peoples, from which diverse individual human rights flow, are not in themselves human rights. States would feel emboldened to continue the condemned practice of “extinguishing” Indigenous peoples’ collective rights, since these rights would purportedly not constitute human rights.

Recommendations

We respectfully urge the U.N. Commission on Human Rights to adopt a new resolution in this current session that includes the following directives for the CHRWG:

- Extension of the mandate of the Working Group so that a strong *U.N. Declaration on the Rights of Indigenous Peoples* may be eventually adopted by the General Assembly
- Introduction of explicit criteria within the Working Group, so as to ensure strict adherence to the Purposes and Principles of the *U.N. Charter* when any participant proposes new or modified human rights norms
- In particular, proposals to undermine the human rights of Indigenous peoples or create discriminatory double standards should not be afforded any credibility within the Working Group
- Proposals by any participant in the Working Group must be consistent with international law and its progressive development

- Proposals must be fully compatible with the basic aspirations, status and rights of Indigenous peoples, and seek to redress the impacts of discrimination, genocide, colonization, forced assimilation, dispossession, marginalization and exclusion.

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