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

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.

[1 February 2003]

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

The right of all Peoples to Self Determination is a critical issue with regard to the current discussions on the Draft Declaration on the Rights of Indigenous Peoples. The International Indian Treaty Council calls the attention of the Commission to United Nations guidelines as established by the General Assembly¹ on setting international standards in the field of human rights, particularly with regard to the right of Self Determination of Indigenous Peoples, now being discussed at the Commission's Inter-sessional Open-ended Ad-hoc Working Group on the Draft declaration on the rights of Indigenous Peoples.²

General Assembly resolution A/Res/41/120 emphasizes the primacy of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights³ and the International Covenant on Economic, Cultural and Social Rights in the extensive network of international standards in the field of human rights established by United Nations bodies and specialized agencies.

Operative paragraph 2 of the resolution, "Urges Member States and United Nations bodies engaged in developing new international human rights standards to give due consideration in this work to the established international legal framework."

The General Assembly, in Operative paragraph 4, "Invites Member States and United Nations bodies to bear in mind the following guidelines in developing international instruments in the field of human rights; such instruments should, inter alia:

- (a) Be consistent with the existing body of international human rights law;
- (b) Be of fundamental character and derive from the inherent dignity and worth of the human person;
- (c) Be sufficiently precise to give rise to identifiable and practicable rights and obligations;
- (d) Provide, where appropriate, realistic and effective implementation machinery, including reporting systems;
- (e) Attract broad international support.

Consistent with the existing body of International human rights law, Article 3 of the draft Declaration states:

"Indigenous Peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

As pointed out in the Secretariat's technical review of the Draft Declaration, the text of this article is consistent with the existing body of international human rights law, and "...is precisely based on article 1, paragraph 1, of the two international covenants."⁴

Consistency with existing international human rights law is also found in the jurisprudence of the Human Rights Committee, the Treaty Monitoring Body of the International Covenant on Civil and Political Rights. As the International Indian Treaty

Council has long pointed out, the Human Rights Committee has applied the right of Self Determination pursuant to Article 1 of the Covenant to the Indigenous Peoples of Canada⁵, Mexico⁶, Norway⁷ and Australia.⁸

Article 3 of the Draft Declaration is entirely consistent with the existing body of international human rights law and totally within the existing international legal framework. As the Human Rights Committee notes:

“Article 1 enshrines an inalienable right of all peoples as described in its paragraphs 1 and 2. By virtue of that right they freely ‘determine their political status and freely pursue their economic, their economic, social and cultural development. The article imposes on all States parties corresponding obligations. This right and the corresponding obligations concerning its implementation are interrelated with other provisions of the Covenant and rules of international law.’⁹

The recognition of the right of self determination for Indigenous Peoples is equally consistent with part 4b of the General Assembly resolution on standard setting, that it “Be of fundamental character and derive from the inherent dignity and worth of the human person.” In their General Comment 12, the Human Rights Committee states:

“The right of self determination is of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is for that reason that States set forth the right of self-determination in a provision of positive law in both Covenants and placed this provision as article 1 apart from and before all of the other rights in the two covenants.¹⁰

Many United Nations experts and fora, in addition to the Human Rights Committee, have recognized the inherent dignity of Indigenous Peoples as Peoples, as a group, as a collectivity. The Vienna Declaration, for example, states:¹¹

“The World Conference on Human Rights recognizes the inherent dignity and the unique contribution of indigenous people to the development and plurality of society and strongly reaffirms the commitment of the international community to their economic, social and cultural well being and their enjoyment of the fruits of sustainable development. States should ensure the full and free participation of indigenous people in all aspects of society, in particular in matters of concern to them. Considering the importance of the promotion and protection of the rights of indigenous people, and the contribution of such promotion and protection to the political and social stability of the States in which such people live, States should, in accordance with international law, take concerted positive steps to ensure respect for all human rights and fundamental freedoms of indigenous people, on the basis of equality and non-discrimination, and recognize the value and diversity of their distinct identities, cultures and social organization.” (emphasis supplied)

With regard to item 4(c) of General Assembly resolution A/RES/41/120, the right of self determination of Indigenous Peoples is “sufficiently precise to give rise to identifiable and practicable rights and obligations.” The States, including some States in the Working Group that have voiced objections to the recognition of Indigenous Peoples as “Peoples” with the right of self determination, have the jurisprudence of the Human Rights Committee, statements and declaration of many varied United Nations fora, UN specialized agencies and as well as numerous experts and Special Rapporteurs to guide them in the meaning of the right and their obligations to Indigenous Peoples. Some of those states, including Canada and Australia, have already been instructed directly by the Human Rights Committee as to how to comply with this legally binding obligation under the Covenant with regard to Indigenous Peoples. There is, as the preamble of the General Assembly resolution emphasizes, the primacy of the International Covenant on Civil and Political Rights, to guide them. This resolution urges States to give due consideration in standard setting, to the established international legal framework. That framework exists to guide the States.

Item 4(d) of the General Assembly resolution invites the States to bear in mind that the instrument should “provide, where appropriate, realistic and effective implementation of machinery, including reporting systems.” Although no such machinery is proposed by the draft Declaration with regard to the right of Self Determination, machinery, including reporting systems, already exists, for example, under the Covenants with regard to the right of Self Determination and Indigenous Peoples.

With regard to the final guideline of the General Assembly resolution A/RES/41/120, on standard setting in the field of human rights, 4(e), of attracting broad international support, it should be kept in mind that almost without exception, United Nations specialized agencies, experts, Special Rapporteurs¹², and others who have addressed the issue of Indigenous Peoples’ human rights and fundamental freedoms, have accepted the fact that Indigenous Peoples are Peoples without any qualification to the accepted international standard for use of the word. Indeed, at the November 2002 session of the Commission’s Working Group on the draft Declaration, a great majority of the States that commented on the matter stated a position of acceptance of article 3 of the draft Declaration without change or qualification.

A few States participating in the Working Group ignore the existence of an international legal framework and established international human rights law that should guide their standard setting activity. They take the position that they can ignore existing international standards because they have not ratified the particular Covenant or Convention reflected in the draft Declaration, or that the recommendations of the Human Rights Committee were not addressed to them directly. General Assembly resolution A/RES/41/120 only requires that a standard be consistent with the existing body of international law, not that it has been adopted by or directed to any particular State involved in standard setting.

In light of General Assembly resolution A/Res/41/120 and the rules established by the United Nations for standard setting, we urge the Commission and its Working Group created by resolution 1995/32 to consider and be guided by existing international law.

We would agree with the ILO¹³ that any standard which may be adopted by the United Nations should not in any case, be lower than those already recognized and accepted by the extensive United Nations network of international standards, including, *inter alia*, the Human Rights Committee.

Indigenous Peoples cannot accept a declaration establishing lesser standards than those already recognized as their human rights and fundamental freedoms by international law and the established legal framework of the United Nations.

for all our relations

¹ General Assembly resolution on Standard setting in the field of human rights, A/Res/41/120 of 4 December 1986.

² Hereinafter, “the Working Group.”

³ Hereinafter “ICCPR.”

⁴ Technical review of the United Nations draft declaration on the rights of indigenous peoples, E/CN.4/Sub.2/1994/2, 5 April 1994, at para. 30. The Secretariat has also done similar technical reviews of other important human rights instruments, such as the draft convention on the rights of the child (E/CN.4/1989/WG.1/CRP.1/Add.1), the draft international convention on the protection of all migrant workers and their families (A/C.3/45/WG.1/WP.1/Rev.1/Add.1), and the draft declaration on the rights of persons belonging to national or ethnic, religious or linguistic minorities (E/CN.4/1991/WG.5/CRP.1).

⁵ CCPR/C/79/Add.105, 7 April 1999.

⁶ CCPR/C/79/Add.109, 27 July 1999.

⁷ CCPR/C/79/Add.112, 1 November 1999.

⁸ A/55/40, paras. 498-528, 24 July 2000.

⁹ CCPR General Comment 12, the right to self determination (Article 1), paragraph 2, Twenty-first session, 1984).

¹⁰ Id, at para 1.

¹¹ Vienna Declaration and Programme of Action, A/CONF.157/23, 12 July 1993, paragraph 20.

¹² The opinions of experts and their research have long been regarded as part of the standard setting process. See, eg., United Nations Action in the Field of Human Rights, Centre for Human Rights, New York and Geneva, 1994, (ST/HR/2/Rev.4), citing Article 13 of the Charter, paras. 313 et seq. ECOSOC limitations on written interventions by NGOs do not allow the citation of the multitude of expert reports and studies recognizing, directly or indirectly, the right of Indigenous Peoples to Self Determination, in whole or in part.

¹³ Comments by the International Labour Office to the Commission on human rights at its 55th session, (on the draft Declaration on the rights of Indigenous Peoples) E/CN.4/1995/119.