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INDIGENOUS ISSUES

**Written statement* submitted by the International Indian Treaty Council (IITC),
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.

[31 January 2004]

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

Members of the Commission,

The International Indian Treaty Council addresses provisional agenda item 15 at a critical point in this Commission's history with regard to Indigenous Peoples and the full recognition and enjoyment of our human rights and fundamental freedoms - as Peoples. In the final year of the United Nations Decade of Indigenous Peoples, the issue of the Declaration on the Rights of Indigenous Peoples, of the highest priority for the IITC within the goals of the Decade, remains unresolved and appears not near resolution.

We ask the distinguished members of this Commission to reflect on the report by the President of the Ad-Hoc Intersessional Working Group, E/CN.4/84 and E/Cn.4/84/add.1, presently before the Commission. As the President of the Working Group states in that report, much progress has been made in the discussions and a great deal of consensus reached by Indigenous Peoples and many States as to the content of the draft declaration. He reports that many State delegations and Indigenous Peoples' representatives have shown a preference for the original text approved by the Sub-Commission. In spite of this preference, States' proposals for changes and amendments to the Sub-Commission text were also seriously discussed by all, States as well as Indigenous representatives, in the hopes of reaching consensus.

He reports that all Indigenous representatives accepted the use of the term "Indigenous Peoples" without qualification, footnotes or asterisks within the Declaration. No State delegation opposed the term during the last session, a significant sign of progress. But due to the opposition of a very few States to a declared consensus on this issue, even at this late date, a proposal circulated in the final days of the Working Group, that asterisked the use of the term as still "subject to negotiation."

Worse, this unreported proposal would have been substituted for the Sub-Commission draft as the basis of negotiation. As the President reports, the Sub-Commission text is considered as "...always been and continues to be the basis for the negotiations of the Working Group. (Paragraph 5.)

Members of the Commission, the IITC believes that this unwillingness by a few States, to agree to consensus on the most basic of issues reflects the state of the Working Group discussions. We agree with the principle that has guided the discussions, that "nothing is agreed until everything is agreed." But at certain points, consensus must be recorded to measure our progress. This attitude by a few powerful Northern States even to mark the consensus on the words "Indigenous Peoples," continues to seriously retard progress toward a Universal Declaration on the Rights of Indigenous Peoples.

The position of these northern States, as reported by the President, of inserting the word "individual" before practically every right recognized for Indigenous Peoples, also contributes to the retardation of progress. The Sub-Commission text is historic because it gathers evolving international standards and jurisprudence pertaining to the collective rights of Indigenous Peoples. These evolving standards are found throughout the United Nations system on human rights as well as regional organizations such as the Organization of American States and United Nations subsidiary organs. The human rights and fundamental freedoms of Indigenous individuals are already directly protected by general, well-established international norms. The

primary goal of this declaration is to gather and compile collective rights. This is not to say that Indigenous individuals should not be mentioned at all. But it should be kept in mind that the purpose and scope of the Declaration on the rights of Indigenous Peoples is to declare the rights of Peoples.

Members of the Commission, reasonable inferences can be drawn by these States' position at the Working Group from other international fora: they are approaching this human rights document as an impediment to their vision of globalized development. For example, at the World Food Summit: fyl, in Rome, 2003, they took the position that the right to food is not a human right, and that starvation and persistent world hunger would be alleviated, if not eliminated, by an unbridled World Trade Organization. This skewed vision of human rights and their continued questioning of the existence of economic, social and cultural human rights, is reflected in their opposition to the proposition that Indigenous Peoples should not be deprived of their means of subsistence and other proposals in the Sub-Commission draft on land and natural resources.

Recently, at the Workshop on the Study on treaties, agreements and other constructive arrangements between States and Indigenous Peoples, Canada admitted that their Supreme Court mandated treaty negotiations with Indigenous Peoples were premised, on the part of the State, on the extinguishment of Aboriginal title. This insistence on agreed to theft prior to any negotiations with Canada's Indigenous Peoples is reflected in their and Australia's proposal, as well as the discussion on Article 36, found in the President's report.

The United States, at this same OHCHR sponsored workshop on treaties, stated that the problem of treaty disputes was best left to domestic remedies. This reflects their and a few other States' opposition to the Sub-Commission text Article 36. This, in spite of the Organization of American States Human Rights Commission finding in the Dann case (2002), that these same domestic remedies had violated various human rights and fundamental freedoms of the Western Shoshone, in fraudulent and coercive ways. Canada's and the United States attempt to domesticate essentially international agreements, as found by the Special Rapporteur on treaties, is also reflected in their positions at the Working Group on the Draft Declaration.

The United States also fought the inclusion of the proposition that Indigenous Peoples' lands should not be taken away from them, in the Declaration and Programme of Action, as well as the Prepcoms, of the World Conference against Racism. It was a phrase that had been stated in both previous United Nations conferences on Racism. And once they had succeeded in their task, they walked out of the WCAR. This persistent attitude of opposition to fundamental Indigenous rights does not auger well for the United Nations Declaration on the Rights of Indigenous Peoples.

The good faith of these States is called into question by these actions and positions in other fora. They reflect a great mistrust if not rejection of established human rights standards. We have cited these standards to this Commission in previous interventions, as well as at the Working Group. They include standards and jurisprudence established by the treaty monitoring bodies of the International Covenant on Civil and Political Rights and the Convention on the Elimination of all Forms of Racial Discrimination. We can expect no lesser standards in the United Nations declaration on the rights of Indigenous Peoples, particularly when the States

most vocal in their opposition to the recognition of the collective rights of Indigenous Peoples are States Parties to these important, well established, Covenant and Convention.

We necessarily draw the inference from these positions that are on their face contrary to established human rights norms within the United Nations system, that a these States seek to legitimize their continued violations of human rights and fundamental freedoms of the collective or group rights of Indigenous Peoples via the United Nations Declaration on the rights of Indigenous Peoples. This we cannot accept.

We are heartened by the positive participation of certain States at the last session of the Working Group that had not participated fully in previous sessions. With others States that have participated more consistently, they reflect an understanding that the human rights and fundamental freedoms of Indigenous Peoples are collective, and as described by the Sub-Commission text will not be interpreted unreasonably; and that these collective rights necessarily must be interpreted according to well-established principles of international law that apply to all Peoples.

The International Indian Treaty Council congratulates the Seminar on Treaties, agreements and other constructive arrangements between States and Indigenous Peoples, and hopes that this Commission will accept their recommendations for future work on this important theme. We note that the Seminar recommends that Article 36 of the Sub-Commission text on treaties be adopted without change or amendment.

We call upon all States of good will to join us at what may be the last session of this Working Group on the elaboration of the Declaration on the Rights of Indigenous Peoples to join Indigenous Peoples in their struggle for the recognition of their most fundamental human rights and fundamental freedoms as Peoples.

for all our relations..
