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COMMISSION ON HUMAN RIGHTS  
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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**

**Written statement\* submitted by the American Indian Law Alliance and  
the Inuit Circumpolar Conference, non-governmental organizations  
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.

[1 February 2004]

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

In regard to the UNCHR inter-sessional Working Group on the draft *U.N. Declaration on the Rights of Indigenous Peoples*, one of the main impediments to progress and consensus has been the insistence of some States to add specific language to the draft *Declaration* relating to the territorial integrity of States. The inclusion of such language is presented as a precondition for States' agreement to Art. 3 of the draft *Declaration* recognizing Indigenous peoples' right of self-determination.

In particular, at the September 2003 session of the Working Group, the Nordic countries submitted a proposal suggesting the following amendment (underlined portion) to preambular paragraph 15 of the draft *Declaration*:

*Bearing in mind* that nothing in this Declaration may be used to deny any peoples their right of self-determination, and further emphasizing that nothing in this Declaration shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples, and thus possessed of a government representing the peoples belonging to the territory without distinction of any kind,

According to their various statements in the Working Group, the Nordic States made this proposal in order to bridge existing differences within the Working Group. We appreciate their attempts to help find a consensus. However, consensus in violation of the Purposes and Principles of the *Charter of the United Nations* to promote human rights, as well as of the mandate concerning the draft *Declaration* to advance Indigenous peoples' human rights, would not be a valid basis for agreement. This would also be a serious breach of the principles of international cooperation and multilateralism contemplated in the *Charter*.

Upon carefully examining the Nordic proposal, a large number of Indigenous representatives in the Working Group have concluded that the proposed Nordic amendment would create discriminatory double standards. In regard to Indigenous peoples, the interrelationship between the human right of self-determination and the principle of territorial integrity under international law would be significantly altered to our detriment. Our other human rights could also be severely undermined, in ways not yet fully determined.

### **1. Indigenous concerns relating to the Nordic proposal**

According to statements of the Nordic States, their proposed amendment reflects wording from the 1970 *U.N. Declaration on Friendly Relations*. However, the Nordic proposal derogates from the 1970 *Declaration* in significant ways.

The 1970 *Declaration* first affirms 3 key elements: the "principle of equal rights and self-determination of peoples" under the *U.N. Charter*; the right of all peoples to self-determination; and the duty of every state to respect this right. Only then does the 1970 *Declaration* seek to "balance" in different situations these express rights and state obligations with the principle of territorial integrity.

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

...

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour. [Emphasis added]

In contrast, the suggested amendment of the Nordic States does not first recognize clearly the right of self-determination of Indigenous peoples *under international law*. Therefore, the principle of territorial integrity would be applied to a right of self-determination with a different and lesser meaning than the right of self-determination of non-Indigenous peoples; this would not only be discriminatory but also undemocratic. Further, the Nordic proposal does not balance the right of peoples to self-determination with the principle of territorial integrity in the same manner as the Nordic States suggest is done in the *Declaration on Friendly Relations*.

Instead, the Nordic amendment subjects the whole draft *Declaration* – including potentially every human right of Indigenous peoples – to the principle of territorial integrity. This would greatly expand the application of “territorial integrity” in uncertain and unprecedented ways. States could acquire new rationales for dominating Indigenous peoples and overriding or circumscribing the valid exercise of our basic rights.

Evidence of blatant misuse of the principle of territorial integrity against Indigenous peoples is already apparent in Canada. At international law, the principle of “territorial integrity” clearly does not apply to provinces, such as Québec. Nevertheless, a law was adopted in December 2000 that applies the principle of “territorial integrity of Québec” to potentially all matters within the province, regardless of whether it relates to secession or non-secession issues. Maintenance and respect for Québec’s territorial integrity has now become a legal duty of the provincial government. In treaty negotiations on Indigenous land, resource and self-government rights, the government of Québec is increasingly imposing respect for the “territorial integrity of Québec” as a precondition for any agreement.

In view of such far-ranging abuses, it is unconscionable for States to insist that all of our human rights in the draft *U.N. Declaration* be explicitly made subject to the principle of territorial integrity.

States are currently free to invoke “territorial integrity” and other international principles, if and when justifiable circumstances arise. Therefore, there is no need to highlight such principles in the draft *Declaration* so as to possibly imply that these principles have some kind of overriding or special status.

Further, it would make little sense for Indigenous peoples to put at risk such a central and core right as self-determination, by endorsing language in the draft *Declaration* that could well result in a discriminatory double standard. As the U.N. Human Rights Committee has confirmed, the right of self-determination of Indigenous peoples, like all peoples, is affirmed in Art. 1 of the human rights Covenants. The principle of “territorial integrity” should not be applied to the human rights of Indigenous peoples in a manner that is wholly different from that of all other peoples.

In light of past and ongoing violations of Indigenous peoples’ human rights, the central focus must be the integrity of Indigenous territories that has been severely undermined or destroyed by states or third parties. In both historical and contemporary times, this has occurred through colonialism, dispossession, discrimination, forced assimilation, genocide and outright theft.

## **2. Alternative Proposal – Consistent with International Law**

We firmly believe that, if basic international values and principles are strictly adhered to without discrimination, consensus can be reached on “self-determination” and “territorial integrity”. States’ concerns regarding secession, as well as Indigenous concerns with the Nordic proposal, can be addressed in a manner consistent with international law.

On 23 September 2003, an overwhelming majority of the Indigenous peoples’ caucus submitted the following proposed amendments (underlined portion) to the Working Group:

### **Preambular para. 14:**

*Acknowledging* that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights affirm the fundamental importance of the right of self-determination of all peoples, and that this right applies equally to indigenous peoples.

### **Preambular para. 15:**

*Bearing in mind* that nothing in this Declaration may be used to deny any peoples their right of self-determination, exercised in accordance with principles of international law, including the principles contained in this Declaration.

### **Article 3**

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.

In regard to preambular para. 14, our proposed amendment would, for greater certainty, affirm that the right of self-determination under international law applies *equally* to Indigenous peoples. No discriminatory double standard against Indigenous peoples would be created in respect to the right of self-determination. As a human right, self-determination cannot be transformed by the U.N. or member States into a different and lesser right when applied to Indigenous peoples.

In regard to preambular para. 15, our proposed amendment would confirm that the right of self-determination of Indigenous peoples is exercised in accordance with principles of international law. This would ensure that the right of self-determination is exercised in a fair and balanced manner. It would affirm the ability of States and others to freely invoke any principles of international law in the context of Indigenous peoples' right to self-determination. Therefore, there is no need to explicitly highlight the principle of territorial integrity.

The principle of territorial integrity has no special status or significance above a host of other international law principles – such as democracy, rule of law, respect for human rights, non-discrimination, and justice – which all apply in the context of self-determination. There is no hierarchy that would place the principle of territorial integrity above respect for human rights or other international law principles identified in international instruments.

Therefore, we call upon the Commission on Human Rights to urge States to cease imposing new and discriminatory limitations on Indigenous peoples, as a precondition to obtaining affirmation of their right of self-determination in the draft *U.N. Declaration on the Rights of Indigenous Peoples*.

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