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

INDIGENOUS ISSUES

Written statement* submitted by the Indian Movement "Tupaj Amaru", 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.

[2 February 2004]

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

I. Background

1. The right of all peoples and nations to self-determination is an issue that goes far back in time and space, and is probably the most controversial and political concept to arise in the entire history of the struggle between the conquerors and the conquered, colonizers and colonized.

2. In open defiance of the positive trend in social and political history, and in contradiction with international instruments, Western Powers continue to violate the integrity and sovereignty of developing countries, the States of North and South continue to deny ingenious peoples the just recognition of their customary right to self-determination. More than 500 years since the discovery of the New World and the "Encounter of Two Cultures", the Western culture continues to impose on indigenous peoples its own view on the world, its own model of production and consumption, and its own political concepts as intangible and universal.

3. An objective interpretation of customary law based on age-old practice shows us that both in law and in practice self-determination has been vested in peoples since time immemorial and has never been the property of States. If this concept is indeed a universal, indivisible and interdependent one in the development of man and society, then we see no reason why it should be haggled over like a commodity in the marketplace.

4. The most basic understanding of democracy and social justice should lead States to recognize this legitimate and inalienable right explicitly, without restrictions or discriminations, to regulate its application and to guarantee its full exercise, in conformity with prevailing international standards and instruments.

5. In the Resolution 1514 (XV) of 14 December 1960, the "Declaration on the Granting of Independence to Colonial Countries and Peoples", the United Nations General Assembly at long last recognized the self-determination of all peoples as one of the basic principles of the public international law. This inalienable right invests colonized and dependent countries with the power freely to determine their political status, freely to pursue their economic, social and cultural development and freely to dispose of their natural wealth and resources. In essence, as we have already stated, this right is a basic requirement for the effective enjoyment of all other fundamental rights and freedoms.

6. Anyone who argues that this right ceased to apply once the colonial countries had been granted their independence does not understand that it is a right in a state of constant evolution. An objective and coherent analysis of permanent evolution of international standards, shows that this inalienable right applies naturally, without objections or reservations to indigenous peoples.

7. There is no doubt that the instrument which has universal scope in this area is the Charter of the United Nations, Articles 1, 2 and 55 which establish the need "to develop friendly relations among nations based on the respect for the principles of equal rights and self-determination of peoples".

8. From a historical, social, political, and moral point of view, the right of peoples to self-determination as political and social entities is the spiritual cornerstone of contemporary international law, which by its very essence and nature considers society as constantly evolving

towards peaceful coexistence; however, it condemns and rejects any interference in the internal affairs of other States in the name of "international humanitarian law".

9. In the light of these principles, universally recognized by the international community, article 1 of the International Covenants on Economic, Social and Cultural Rights and Civil and Political Rights stipulates: *"All 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"*.

10. In pursuance of this provision, the above-mentioned instruments not only invest peoples with the right freely to dispose of their natural wealth and resources, but also urge States to fulfil their obligations to promote and respect the effective exercise of self-determination, in conformity with the provisions of the Charter of the United Nations.

II. Subjective interpretation of the concept of Self-Determination

11. For over two decades we have been watching the Western Powers of the North, together with the dominant elites in the South, attempt to delay the consideration and adoption of the declaration on the rights of indigenous peoples, water it down in general, weaken the legal force of its provisions in particular, and thus put off indefinitely the day when indigenous peoples will obtain their rights.

12. Their arguments, endlessly reiterated in the Working Group on the Draft Declaration established under the Commission on Human Rights resolution 1995/32, for 10 years now, to the effect that unilateral self-determination for aboriginal peoples would cause the break-up of national States and threaten their sovereignty and territorial integrity, have no legal foundation and no moral justification whatsoever.

13. On the beginning of the twenty-first century, it is fantasy to imagine how indigenous communities and peoples, some of whom are dying out, as the Yanomamis in Brazil, the Chiapas Indians, under attack from modern weaponry, Native Americans in the United States of America, destined for mere survival on "reservations", or the aboriginal peoples of northern Siberia, Kechuas and Aymaras descendents condemned to a poverty and slow genocide, could pose a threat to the sovereignty of the economic and military Powers.

14. The nightmare fantasy of a break-up or secession, the imaginary fears of the States' and Governments being undermined and the supposed threat to territorial integrity have been the consequence time and again of a subjective and tendentious interpretation of the concept of self-determination in international law.

15. States deliberately forget another aspect of the General Assembly Resolution 1514 (XV) of 1960, which, besides bringing an end to colonialism, is also aimed at safeguarding national sovereignty. Paragraph 6 stipulates that *"Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations"*.

16. Despite this clear and precise provision on national integrity, the Governments of the United States of America, Australia, Canada, Ireland and others Members of the European Union indulge in erroneous interpretations with the deliberate intention of distinguishing between the concept of self-determination in domestic and in external law. In domestic law it would apply to indigenous peoples considered as minorities, ethnic groups, i.e. sub-nations or second-class groups; while in international law, it protects the dominant, oppressive nations, i.e. the elites of the North and the South, that wield the political and economic power.

17. For the purposes of this arbitrary classification, which is not to be found in any international law book, aboriginal and native peoples are not recognized as peoples or subjects of law, and therefore lack full capacity to enjoy the right of self-determination. To any discerning jurist, the concept of self-determination is inherent, inalienable, indivisible and universal with regard to both interpretation and practical application. The Universal Declaration of Human Rights, adopted 55 years ago, will not be universal reach in nature if nations and peoples are still being discriminated, excluded and prevented from exercising self-determination or victims of military aggression.

18. These allegations with racist connotation raise another important aspect of the problem. The facts persistently remind us that the real threat to national integrity and sovereignty does not come from vanquished and colonized peoples, but from the old and new metropolitan countries of the North and the power elites of the South. What is the issue actually involved? The reasons behind the systematic refusal to restore indigenous peoples' right freely to determine their own destiny are the great geopolitical and strategic interests of the economic and military Powers of the West.

19. In violation of the General Assembly Resolution 1803 (XVII) of 14 December 1962, which reaffirms the rights of peoples and nations to permanent sovereignty over their natural wealth and resources, the multinational corporations in their headquarters and decision-making centers in the Western countries covet the fabulous natural resources, the oil, natural gas, gold, silver, uranium, diamonds, etc. that lie dormant in indigenous lands and territories.

20. How ironic! The Governments of Latin America claim to be defending national sovereignty, when it is they themselves, with their ultraliberal policies that are unconditionally surrendering their natural resources to the greed of transnational capital. So just who is attacking whom, and who is threatening the sovereignty and independence of the National State?

21. In a State under the rule of law, the most logical and reasonable attitude would be to consider self-determination of indigenous peoples as part of an ongoing dialectic and introduce it as a new category of contemporary international law. By introducing into their constitutions and national laws new concepts and legal categories, such as self-determination, indigenous peoples, collective land rights and permanent sovereignty over natural resources, States could display a noble sense of responsibility and redress and age-old injustice.

III. Lack of political will

22. But experience has shown that the political will to resolve the distressing problems of indigenous peoples throughout the world is lacking. Twenty years ago, the working Group on

Indigenous Populations has elaborated the draft of the United Nations Declaration on the Rights on Indigenous Peoples, Today, this revised Draft has had to withstand the ravages of men and time, gradually losing its political and legal essence, becoming watered down and reduced to a set of obsolete and abstract statements.

23. It is no accident that the provision on self-determination has been relegated from the first to third place in the operative part of the Declaration. This is the result of the political pressures and diplomatic maneuvers of States bent on reducing the legal scope of self-determination and diverting it of its political importance as an inalienable, indivisible and natural right, in order to delay the achievement of indigenous rights indefinitely.

24. Let this much be clear: the right to self-determination in the form in which it is defined in article 3 of the draft Declaration meets legitimate aspirations by providing for greater autonomy in internal government, meaning the governance and management of peoples' own destinies, and is not in the slightest way intended to create mini-States within National States, as those who criticize the principle that each people should be able freely to determine its own destiny would have us believe.

25. Legally speaking, administrative autonomy in local matters is intended to mean the right of aboriginal peoples and communities, within the National State, to manage and use their lands and natural resources and promote their cultural values – in particular, education, environmental protection, health, housing, employment and social welfare- through their own self-governing bodies.

26. There is no doubt that in order for this autonomy to be exercised effectively, aboriginal communities and nations must have full capacity to govern themselves by their own laws, freely determine the forms of and conditions for their own development and assume their duties, together with the national community, as actors in political life and subjects of law.

27. This is a question not simply of recognizing an identity in itself, but of recognizing and identity for itself, i.e. of considering the Indian as an actor in history and a subject of law. Only then will indigenous peoples, under the protection of the principle of self-determination, be political and socio-economic entities with full powers of participation in both national life and the community of Nations.

28. Having into account the fact that, the Working Group established under Commission on Human Rights resolution 1995/32 for the sole purpose of drawing up a draft Declaration on the rights of indigenous peoples have been not obtained any tangible progress during 10 years, the Indian Movement "Tupaj Amaru" has been summit the amendments and constructive proposals to its every sessions.

29. In formulating these amendments and introducing new paragraphs to the operative part relating to **right to self-determination, the lands, territories and natural resources** of the Declaration, our organization, bearing in mind the need to speed progress on the adoption of this important instrument within International Decade of the World's Indigenous peoples, has devoted special attention to the record of the substantive discussions with a view to taking up

and condensing the proposals, comments and recommendations made by Governments and indigenous representatives since 19996.

30. Realizing that some seek to drag out the discussions, dilute the project generally and weaken the sense and legal force of its provisions, we emphasize the urgent need not only to uphold minimum standards but also, where possible, to improve, strengthen and harmonize the legal substance and political, economic and social scope of its provisions as indigenous representatives have been suggesting in Working Group of Commission and other United Nations bodies.

31. In contrast to the unmoving world vision and paralysing stances taken by Western Governments, we believe it is important to conceive of standards and norms as being in permanent mutation and evolution in contradiction of North and South relations, adapting them to suit the changes in economic and political conditions that have occurred over the past decade, and to prospect of the new world economic order.

32. We believe these proposals and introduction of new provisions, more substantive than cosmetic form, seek to embody the dearly held hopes and legitimate concerns of indigenous peoples as voiced to the international community, while at the same time meeting the objections of some Governments and shedding light on their subjective interpretations of categories and legal concepts under international public law which must form the cornerstone of the declaration.

33. Given that the current text emerged from a legal vacuum on the subject of controversial notions requiring attention, such as recognition of the rights of indigenous peoples to define themselves as peoples, the principle of self-determination, the exercise of collective ancestral ownership of land, permanent sovereignty over natural resources, legal protection for cultural and intellectual property, the demilitarization of indigenous lands and the elaboration of a Code of Conduct to govern the activities of multinational corporations.

34. By proposing amendments to the draft Declaration and adding basic rules to the operative part, we hope to have made a substantive contribution to the work of Working Group of Declaration, so that the provisions and rules set out in the declaration, an instrument of capital importance to survival of indigenous peoples, will be consistent with current of international standards, precise enough to give rise to rights and obligations acceptable to the international community, and established upon foundations affording an assurance that they will be applied.

IV. Violation of the spirit of the Universal Declaration

35. At the beginning of the twenty-first century, the international community as a whole, and minorities and indigenous peoples will commemorate the fiftieth five anniversary of the Universal Declaration of Human Rights, which was solemnly proclaimed by the United Nations General Assembly, meeting at the Palais de Chaillot in Paris on 10 December 1948.

36. In an irony of history, the 1948 Universal Declaration was neither a treaty nor a convention, but simply a *"common standard of achievement for all peoples and all nations"* (last preamble paragraph). According to a liberal interpretation, the proclamation of a symbolic text

with the loftiest and most distant vision entails nothing more than a moral obligation for the States drafting it.

37. Fifty five years after the proclamation of that universal instrument, which placed the individual and his/her personality at a high level nationally and internationally, the concept of the universality, indivisibility and interdependence of human rights is being subjectively interpreted and selectively implemented, increasingly challenged by some, while defended by others.

38. Whatever the controversy surrounding the concept of universality, whether a moral force or a legal force giving rise to an obligation, we have found that there is a double standard where the implementation of a so-called universal instrument is concerned.

39. A more half century of experience has shown us how much its provisions are applied in a selective, discriminatory and unfair manner towards third world peoples, particularly nations struggling for their right to self-determination, and aboriginal minorities and populations throughout the world, who are today more that ever being deprived of their fundamental rights, despoiled of their land, subjected to racism, racial discrimination and terrorism and doomed to extreme poverty and rural exodus. The Declaration's framers took no interest in the situation of indigenous peoples, who are excluded from the international community of nations.

40. The Declaration would not be universal if it did not apply, on the basis of the principle of equity and equality, to all members of the family of man and it would have no meaning if its provisions did not extend to all peoples without restriction or discrimination.

41. In a unipolar world, the United States of America, aware that they are the only economic and military Power on Earth, imposes on the peoples of the third world its particular vision of democracy, its model of development and its conception of human rights as absolute and universal world values. American hegemony is reflected in the world Power's total domination in the following six fields: economic, political, military, technological, audio-visual and human rights. Convinced that it has a mission to fulfil on the world scene, America subjugates the world as no empire has ever done in the history of mankind.

42. Each year the administration in Washington is forced to advise a sort of human rights diplomacy that will enable it, as necessary, to justify itself and its selective and discriminatory policy against Blacks, Indians, the Latino community, the Muslim populations etc. or to denounce, accuse or single out Governments it suspects of human rights violations and even terrorism. The defendant's bench in the Commission on Human rights is often occupied by developing countries, which do not conform to the policy of Western Powers.

43. The human rights issue in North-South relations is being misused by the Western Powers, beginning with the United States, either as a political and diplomatic weapon or as a means of economic and ideological coercion designed to subvert or destabilize a sovereign State by means of economic blackmail (embargo, blockades) and political pressure that does not stop short of military aggression against Yugoslavia, Afghanistan and Iraq in an effort to change the regimes it feels are a threat to its "vital interests".

44. The temptation is strong for the United States to marginalize the United Nations, act in the place of the Security Council, ignore the role of the International Court of Justice in the peaceful settlement of regional and international disputes and reject and refuse the existence of the International Criminal Court.

45. When economic and military Powers use international law ruthlessly to sacrifice scapegoats on the altar of a new world order, a system-wide democratization of the United Nations is more necessary than ever for the maintenance of international peace and collective security.

46. And so 55 years after the Universal Declaration was solemnly proclaimed, the marble portico is turning into a magnificent façade behind which piles of resolutions lie sleeping in archives; little by little, the door closes, barring entry to the temple of human rights for the Indigenous and the excluded. The Declaration cannot be universal if this temple of frosted glass, concrete and cold marble does not open its doors to all peoples without distinction or discrimination, especially to the marginalized minorities and aboriginal nations of the so-called universal community and to the victims of grave and systematic violations of their fundamental rights and freedom.
