STATEMENT OF THE GULL BAY FIRST NATION, ONTARIO, CANADA

BEFORE THE WORKING GROUP ON RIGHTS OF INDIGENOUS PEOPLES, GENEVA ON

AUGUST 3, 1989

ON

STANDARD SETTING

Presented by:

(Mr.) Carroll P. Hurd, B.S. M.A., LL.

STATEMENT MADE BY THE GULL BAY FIRST NATION OF ONTARIO, CANADA TO THE WORKING GROUP ON THE RIGHTS OF INDIGENOUS PEOPLES

AUGUST, 1989

As the designated representative of Chief and Council of the Gull Bay First Nation in Ontario, Canada, I want to take this opportunity on their behalf to extend to you, Madam Daes, greetings and to further extend congradulations for the leadership you have given to the Working Group and the extra-ordinary initiatives and efforts taken by you and the Working Group to further the development of a declaration of indigenous peoples rights.

The Chief and Council of the Gull Bay First Nation have on several occasions reviewed the various draft proposals put forward by you and members of your group over the past couple of years including the most recent E/CN. 4/Sub. 2/1989/33 under date of June 15, 1989. Written responses or representations have been filed with the Working Group.

No one that I have had the occasion to talk with would deny that progress of immeasureable distance and weight have been achieved toward the development of a declaration on the rights of indigenous people---something that seemed so far away seven or eight years ago. But progress, while commendable, cannot be accepted as a task done or as standards set.

It is for that reason that the Gull Bay First Nation makes the following observations, comments and recommendations.

First, the current progress proposed draft declaration rightly and explicitly recognizes and affirms the natural and moral basis of indigenous rights and in several instances within the proposed draft the strength of such affirmations ring very clear---note Part II, paragraph three. One must, however, be more than laudatory over the presence of such recognitions and affirmations in a draft document. One must equally be saddened that such basic rights and the basis for those rights have been denied and trampled by beliefs in and practices of racial superiorty by colonial people, persons, corporations and nations for such a long time. No great

claim for the advancement of natural and moral rights for indigenous peoples by and for humanitarian reasons by those exercising sheer power and raw strength over indigenous peoples should be exercised in self-congratulations. The denial of the rights of indigenous peoples were often denied on exactly the same grounds---that is, the claim of superior moral and natural authority by the oppressor. It now becomes ironical that the justification of indigenous rights now are beginning to be recognized on the same bases as they were originally (and in many places still are) denied. It is therefore suggested that the claim for the recognition and protection of indigenous rights in an international instrument on moral and natural rights grounds may seem a vain victory approached with the same suspicions and reservations by indigenous peoples as was the claim by those who justified their actions against indigenous peoples on exactly the same grounds.

Second, it must, therefore, be recognized that the tone and affirmation of such recognitions as contained in the draft proposal carries, unfortunately, not only a tone but gives a prescience of paternalism. I need only to point to Part I, paragraph 2 or paragraph 27 under Part V, and in particular paragraph 29 of Part VII which reads: "these rights constitute the minimum standards for the survival and the well-being of the indigenous peoples of the world."

Is it, I must ask, a salve to or for our conscience as the suppressor or oppressor to now so grandly acknowledge and affirm "minimum" standards and therefore "minimum rights" to the first peoples for which this nation-state working group is charged. For a salve it must be for the oppressors. With due respect, Madam Chairperson, can it be said or acclaimed to be a gigantic victory for the oppressed, the indigenous peoples? Surely, humanity demands more than that!

The demands of indigenous peoples require more than the recognition and affirmation of moral and natural rights be they of the person or of the collective--the group--the community--the nation. They require and are here in this meeting as they have been for seven years seeking a legal base for their rights---a legal base that will be recognized, entrenched and honoured by all parties be they the person, the national state, the transnational and multi-national corporation and which can form the basis for the resolution of competing and conflicting claims.

The construction, recognition and entrenchment of a legal basis must carry either explicitly or implicitly a jurisprudence pronouncing an objective standard (not simply a minimum standard) in order to have greater certainty in the defense of indigenous claims to their rights than does the appeal to moral virtue or ethical codes. After all, it was the affirmation of a superior moral virtue and ethical code by which indigenous peoples were oppressed and their rights denied. Unfortunately but with some justification indigenous peoples may now view the proposed draft declaration which recognizes moral and natural rights as minimum standards as nothing more than the back side of a dominant moral superiority and ethical concern of a nation-state system which on the same arguments destroyed and originally denied those basic moral and natural rights in the first place. To put it more to the point, moral and natural rights recognition and entrenchment is for indigenous peoples not enough. Minimums are not sufficient.

Fourth, to, therefore, move the discussion and hopefully the practice of recognition and entrenchment of indigenous peoples' rights into international instruments, a fundamental perception of the legal basis for indigenous rights must also be articulated. That legal base must come to grips with the basic concept that indigenous peoples by definition are first peoples--- first peoples who have first claims to their lands, territories and resources---first peoples who have rights and claims to their own cultures, values and institutions, first claims and rights to their resources---surface and sub-surface, renewable and non-renewable. This simply means that if an international instrument is to have validity for indigenous peoples, it must recognize, entrench and make valid the fact that they have prior claims---they have prior rights over any and all competing rights and claims, and the legal safeguard for those prior rights and claims must rest on an objective criteria and standard that such claims come first.

The concept of being first, being ahead of or having claims which come before other claims is a notion fundamental certainly to the legal systems of the West be it the civial and/or common law. In fact, such fundamental basis for the determing and recognition of rights and claims of indigenous people has been very evident in the relations of non-indigenous peoples toward indigenous peoples. Two observations on point..

In paragraph 15 of Part III of the most recent draft declaration points out various rationales and arguments put forward by colonial powers to deny indigenous peoples their prior claims, particularly to their lands and resources in order to put the colonial claim to certain rights ahead of or prior to the indigenous peoples claims. Those arguments were wrapped up in elaborate legal jurisprudence on notions of discovery, terra nullius, waste lands or idle lands and further notions of savagery, unchristian and heathen. The point to note is that fundamental propostions of being first or having rights, claims which were ahead of those of the colonial powers had to be changed in order to put rights and claims of non-indigenous persons or governments or corporations ahead of the indigenous rights and claims. Laws and regulations, such as the Indian Act in Canada, became legal legislative justifications for such actions.

In the historical development of the relations between indigenous peoples in Canada and the Crown, the Royal Proclamation of 1763 clearly recognized that the Indian people in Canada had title to lands as tribes or nations and because of such first claims, those lands could not be taken or claimed by settlers until a process had been followed and entered into by both parties for the orderly and legal transfer of those lands held under those rights and claims. The process was the treaty process, a process which required the consent of the indigenous people.

What has happened over the past one hundred years or more is that Canada has denied that the treaties have any international standing; that they are merely personal contracts and the results of such denials is that justification by the Governments (both federal and provincial) is made for Indian acts, provincial jurisdiction, permits, licenses as it pertains to Indian lands, resources, hunting, fishing and the general lack of economic, political and cultural developments. By such actions, and by the rejection of basic laws as the Royal Proclamation and treaties, Indian rights and claims are last on the list and non-indigenous peoples, including governments, are now first.

Last, Madam Chairperson, commendation must be given to you and the Working Group for the advancement of indigenous rights based upon natural and moral grounds; but, the efforts and initiatives advanced must be grounded more securely in a legal base and that legal base is the

clear articulation and entrenchment that indigenous peoples' rights by definition and jurisprudence are based upon the objective fact that such rights are prior rights to those rights and claims made by others.

Clearly set out Ind. Prior Rights

I recognize, Madam Chairperson, that such a proposition may be more a difficult position politically to achieve at this nation-state level. But, I recommend to the Working Group that efforts of a serious and thorough nature be undertaken to develop language and phrasing regarding the explicit articulation of indigenous peoples prior rights. And finally, that such recognition and entrenchment be made apart of not only the text of the draft declaration, but that such a notion by conceptual expression be in the Preamble.

To couple and re-inforce natural and moral rights and claims of indigenous peoples as is now put forward in the draft declaration with a more objective and explicit legal standard grounded on the basis of prior rights would strengthen the proposed declaration and begin the form the basis of the resolution of indigenous rights over competing rights and claims.

THANK YOU VERY MUCH.

Presented by:

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