

Thank you for giving me the floor for the first time Ms. Daes. My name is Jim Falkowski, and I am a lawyer from California who has written 2 law review articles and a book on self-determination. The Working Group is in the process of creating a double-standard in the field of international human rights law. That is what all this talk about "peoples" and "self-determination", but "not as those terms are understood in international law" is about. I propose that the Working Group use the exact same language contained in Art. 1 of both International Human Rights Covenants of 1966, merely adding the word "indigenous" between the words "all" and "peoples" in the first two paragraphs. All, and I would like to emphasize the word all, which is missing in the current proposed draft.

1. All 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.

2. All indigenous peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

If the human right of the indigenous peoples to self-determination is to be recognized as equal to the human right of all other peoples to self-determination, then there is no reason not to use exactly the same language, and if the Working Group is searching for precise universal language, it is contained in these two Covenants. If the Working Group does not want to recognize the human right of indigenous peoples to self-determination, it should use different language, such as that currently proposed, and international lawyers will spend the next 500 years explaining the differences. The racist and discriminatory body of law that has been applied to the Indigenous Peoples of the Western hemisphere for 500 years will continue. Same language, same human rights: different language, different human rights. I submit that this is totally inappropriate for a document of this nature and that the limitations contained in the last sentence of proposed Paragraph 1 should be deleted.

To paraphrase Thomas Jefferson, all peoples, including Indigenous Peoples, received the right of self-determination with their being, from the hand of nature. As was mentioned by Mr. Moses, human rights are not given, they are recognized: they always have existed, they exist now, and they always will exist. The only question is whether the international legal system is willing to recognize the equal existence of that right now, after 500 years of non-recognition for the Indigenous Peoples of the Western Hemisphere.

My proposed language will also solve the problem of inconsistency

with existing human rights documents, and the principle of equal rights contained in the UN Charter.

I would also like to add that I find the position of my government to be totally inconsistent with its own self-determination policy for the last 22 years and with the hundreds of bi-lateral treaties it has negotiated with Indian nations.

The decision that the members of the Working Group makes in this article will very probably be the single most important decision you will make in your professional lives as human rights experts. I ask that you take your time to carefully consider the language you use in this article because it may very well adversely affect the lives of hundreds of millions of Indigenous Peoples for more than the next 500 years. I ask each member of the Working Group to put your reputation and personal integrity on the line, and not give in to short-term, short-sighted political pressure. I ask each member of the Working Group, Mr. Chernichenko, Mr. Hatano, Ms. Attah, Mr. Alfonso-Martinez and Ms. Daes to seize this rare opportunity to strike a blow for freedom, and damn the torpedos.