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COMMENT ON DRAFT OPERATIVE PARAGRAPH 29 OF E/CN.4/Sub.2/1992/28

Madame Chairperson

My name is Steve Aronson and I am representing the United Indian Councils, which acts in the common interests of 9 Chippewa, Mississauga and Pottawatomini First Nations in Canada.

These comments are intended to illustrate the need for paragraph 29 of the draft declaration.

The proposed draft paragraph has, as one objective, that indigenous peoples have the right to submit disputes concerning treaties to competent national or international bodies. The need to refer treaty disputes to a competent and impartial international tribunal may be of particular importance to indigenous peoples no longer residing in those States in which they have treaty and other rights.

The concern raised is amply illustrated by the continuing situation of the Pottawatomini of Moose Deer Point, one of the nine First Nations forming the United Indian Councils. The Pottawatomini in Canada have been pursuing every available forum in the United States to obtain a remedy for their treaty claims without success.

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Briefly, the Pottawatomi traditionally had sovereignty over a large portion of what are now the states of Wisconsin, Illinois, Indiana, Michigan and Ohio, in what is now the United States of America. They had extensive relations with other indigenous peoples and, upon the arrival of the Europeans entered into a number of treaties with both the French and English. Prior to the American War of Independence the Pottawatomi were allied to the British.

After independence the Pottawatomi entered into sixteen treaties with the American Congress between 1795 and 1846 which concerned the provision of lands and annuities for the benefit of the Pottawatomi. The treaties also divided the Pottawatomi into five separate tribal groups, including one grouping now known as the Pottawatomi Nation of Canada. The Pottawatomi of Moose Deer Point is a member of the Pottawatomi Nation of Canada.

In 1833, the Treaty of Chicago was signed, although not by the Pottawatomi Nation of Canada. This Treaty called for the removal of the Pottawatomi to the newly created Indian Territory to the west of the Mississippi River. Despite being pursued by special Indian Agents, 2000 - 3000 Pottawatomi fled to Canada, escaping the "Trail of Death" as the removal has become known. They have remained in Canada for the last 160 years in some 35 different indigenous communities in Canada.

Despite the fact that the Pottawatomi Nation of Canada did not sign the Chicago Treaty they are, under American domestic law, bound by that Treaty. The most they can hope to achieve is to receive their share of cash entitlements provided for under the treaties and the recognition of the United States as a tribal government in accordance with the American Constitution.

The Pottawatomi Nation of Canada has, for more than 100 years, attempted to gain recognition of the obligations of the United States Congress made under the treaties. The United States government does indeed recognize the treaty entitlements of the Pottawatomi Nation of Canada and has established the nature of the debt and to whom it is owed.

Unfortunately, that government has also refused to implement the treaty rights and entitlements for the Pottawatomi Nation of Canada. The basis of this refusal is that the Pottawatomi no longer live in the United States and this bars the United States from resolving the claim. This refusal is based on the Indian Tucker Act.

A recent decision of the United States Court of Claims (May 21, 1992) has once again denied the remedy of the Pottawatomi in Canada to its treaty entitlements, this time because of the 6 year time limit provided under the general Tucker Act.

In pursuing its claim, the Pottawatomi have had the active support of the Government of Canada, the Assembly of First Nations, the National Congress of American Indians and the Native American Rights Fund, as well as numerous Senators and Congressman.

It is certain that other indigenous peoples have faced similar difficulties in seeking restitution or the resolution of treaty disputes.

The Pottawatomi situation which has been described demonstrates the need for the inclusion of paragraph 29 in the declaration and the reference to international bodies. This draft paragraph will permit an appropriate international forum for disputes arising out of treaties, if States do not make provision for adequate or any national bodies. In addition, resort to international bodies is also appropriate if States place legal and procedural obstacles in the path of indigenous peoples seeking resolution of treaty disputes.

The following wording is therefore suggested in place of draft operative paragraph 29 :

"The duty of States to honour and to implement treaties and other agreements concluded with indigenous peoples, and the right of indigenous peoples to submit any disputes pertaining to treaties between indigenous peoples and States to competent and impartial national or international bodies".

We would also note that paragraphs 17, 20, 29 and 30 concern a range of possible subjects of dispute between indigenous peoples and States. There is considerable overlap between the forums for dispute resolution proposed in paragraphs 29 and 30. It is suggested that these references be consolidated into one paragraph, with the inclusion of a reference to international bodies.

The United Indian Councils sincerely appreciates this opportunity to comment on the draft declaration and asks for the consideration of the United Nations Working Group on Indigenous Peoples for our proposals.

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