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**National Aboriginal & Islander
Legal Services Secretariat**

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WORKING GROUP ON
INDIGENOUS POPULATIONS.
6th SESSION.

EVOLUTION OF STANDARDS.

WGIP 88/OCE. AUS/1

The Working Group has entered a crucial and creative phase. Your preliminary draft provides a focus for an informed debate. We thank you for your contribution. We obtained a copy of your draft only last week; there has been insufficient time to develop a complete and detailed analysis. This is highlighted by the discussion during the Indigenous Peoples' Preparatory Meeting last week.

We wholeheartedly endorse the statement made by Brian Deer of the Mohawk Nation on behalf of that Preparatory Meeting on Indigenous Peoples.

In addition we offer the following initial comments and constructive proposals in a spirit of friendship to assist you, and the other Working Group Members, to effectively reconsider your preliminary principles and language.

We are of the view that the clarity of the principles will be enhanced ONLY if a language is used which draws on the inherently collective nature of Indigenous Peoples, Society and their integral relationship, as a political entity, with their territory.

The cornerstone of the Declaration must be securely based on the recognition that Indigenous Peoples and Nations possess the Right to Self-Determination. In this regard, Part 5 of your preliminary draft should be reconsidered in order to clearly emphasize the Right to Self-Determination in all of its manifestations. Indigenous Peoples' complex and especially spiritual relationship with the Earth must be expressed in territorial terms.

Relations with Indigenous Peoples and Nations must be conducted through their own authentic institution as determined by themselves. States should not be permitted, by the Declaration, to unilaterally impose "solutions" or decisions onto the Indigenous Peoples.

The Declaration must be based on the recognition that Indigenous Peoples and Nations are not only subject to direct and violent attacks, BUT, also to more subtle forms of aggression including various forms of duress and psychological

torture. Indigenous societies may be destroyed through the imposition of individualistic philosophies, the hallmark of some alien invading cultures, which deny (even prohibit) the existing realities which give rise to the notion of collective rights.

The Declaration should incorporate Indigenous Peoples and Nations rights to control their territorial and other resources wherever in their territory they are located. Indigenous Peoples' existence is threatened by states denial of their CULTURAL values as much as the ~~attacks~~ on their physical integrity: this may result, as it has in the past in cultural genocide.

On the basis of these preliminary observations, we tentatively suggest the following revisions to a number of Articles.

Art.
Firstly, /12 could read:

"The Right to ownership, unrestricted possession, and use of the territories, which they have traditionally occupied or otherwise used.

All matters affecting the territory of Indigenous Peoples and Nations must be determined by their informed consent, ["]FREELY,["] and I STRESS not obtained by duress, enticements or other trinkets, but FREELY through their own institutions". And we mean authentic institutions. '

Madame Daes and Working Group members, you must ensure that the language is sufficiently comprehensive to

- a) recognize and protect territorial rights for those peoples that have been historically relocated from their land, ^{and} territory:
- b) to include such situations as right to access to ~~ceremonial~~ places, resources etc. which may not constitute actual occupation, and
- c) In addition, we must not forget that effective provisions will be needed to cover instances of illegal and brutal dispossession.

In relation to Art. 14, we suggest

it could read

(14) "The right to ownership and control over ALL resources, surface and subburface, pertaining to territory they have traditionally occupied or otherwise used.

Special measures shall be undertaken to ensure the effective enjoyment of this right".

Madame Daes, these are just two examples of how we think the principles and language could be reconsidered. We offer them in the spirit of friendship that you have so often referred to.

A final point:

To assist the Members of the Working Group to understand, from an informed and objective perspective aspects, of the situation facing Indigenous Peoples in Australia, may I Table a copy of your Report of your visit to our Territory?

We note that this report will be a valuable educational resources.

Those illinformed reactionary state governments such as the recently elected General Government in NSW Australia would be well advised to carefully review their ill conceived practices in light of your careful and balanced observations.

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