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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection of
Minorities
Working Group on Indigenous Populations
Second Session (8-12 August 1983)

STATEMENT ON LEGAL STANDARDS

by the

FOUR DIRECTIONS COUNCIL

a non-governmental organization in consultative status,
Category II, with the Economic and Social Council

The Santeioi Macaioimi Mikmaoei:

"At the first session of the Working Group in 1982, there appeared to be general agreement among both the States and indigenous representatives participating that, at a minimum, indigenous populations should enjoy the same general human rights as others under existing international norms. The implementation, rather than the adequacy of existing norms was stressed by most of the delegations. Self-determination, land, and religious and cultural rights were emphasized, as well as the right to existence, with attention to existing international agreements on the crime of genocide and the protection of human rights.

As we suggested in our intervention at last year's session of the Working Group, we find three potential legal obstacles to the full enjoyment, by indigenous populations, of the rights and freedoms secured by the International Covenants on Human Rights. First, whether indigenous populations are 'peoples' within the meaning of the Covenants. Second, whether treaties made with indigenous populations, and in all respects purporting to be of the same character as any other treaties, are of equal dignity and juridical significance. And third, whether the location of an indigenous population within the municipal territory of a State bars consideration of communications under Article 1 of the International Covenants.

We believe that it is only fitting and necessary, as the foundation for the future work of the Working Group, that the essential jural equality of indigenous and other peoples be declared unambiguously. It would be curious to begin the examination of indigenous populations' rights, by failing to affirm their basic humanity, and the irrelevance of their race, cultures, or the stage or nature of their socio-political organizations to the enjoyment of universal human rights. If agreement on this simple proposition cannot be reached, it would seem pointless to continue the examination of specific situations and issues.

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We can find no basis in contemporary international law for a discrimination against 'indigenous' societies on account of their characteristic social organization, technological capabilities, or cultures. If, indeed, a large proportion of the world's indigenous populations are of 'American Indian' origins, this racial classification would also seem no legal basis for distinction. Relative physical numbers or military power have long since been abandoned as tests of collective rights or of statehood: the legal framework of world affairs today presupposes the jural equality of all States and peoples, 'large and small', as a deliberate rejection of the imperialistic model of great Powers and colonies.

If there is some specific legal basis for excluding indigenous populations from universal human rights, we would like to know it. If none can be found, we would like to see the universality of these rights re-affirmed as a signal of hope and respect for the world's indigenous populations.

Attached to this intervention as an Annex is proposed language for a Resolution of the Commission on Human Rights for this purpose. We respectfully suggest consideration and adoption of this Resolution by the Working Group, for transmittal to, and consideration by, the Sub-Commission and the full Commission."

Annex

DRAFT RESOLUTION DECLARING THE UNIVERSALITY OF ALL HUMAN RIGHTS

Recalling Resolutions 1589 (L) and 1982/34 of the Economic and Social Council, calling for the study of discrimination against indigenous populations, with special attention to the evolution of standards,

Recognizing and affirming the urgent need to promote and to protect the human rights and fundamental freedoms of indigenous populations,

Mindful that the universal implementation of human rights is essential to world peace, and

Believing that the human rights guaranteed by the International Covenants on Human Rights should be enjoyed equally without regard to race, culture, or stage of socio-political organization,

1. Declares that indigenous populations are "peoples" within the meaning of the International Covenants on Human Rights, unless and until they freely and unambiguously choose to incorporate themselves with other States or peoples by democratic means,

2. Further declares that treaties formerly made by States with indigenous populations constitute evidence of statehood, and are of no less dignity than treaties made with other States, and

3. Recommends that the geographic location of an indigenous population be no bar to the admissibility of communications to the Commission on Human Rights or the Human Rights Committee, concerning any of the rights enumerated in the International Covenants on Human Rights.