

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 CONCERNING RACISM IN THE APPLICATION OF THE PRINCIPLES OF
SELF-DETERMINATION AND LEGAL EQUALITY OF STATES

of the

FOUR DIRECTIONS COUNCIL

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

The Santeioi Maaioimi:

"There are two general kinds of racial discrimination. One is denying the legal equality of citizens of a State, in regard to individual rights. The other is denying the legal equality of States and peoples, in regard to the rights of self-determination, statehood and territorial security. We are concerned here with the second.

The equal right of all peoples to self-determination is fundamental to the universal realization of human rights generally. As Hector Gros Espiell observed in his 1980 report to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the exercise of self-determination is a people's ultimate recourse against all forms of social, economic and political disenfranchisement - a means by which they may erect a legal regime more conducive to their equality, freedom and dignity.

Decolonization has aimed to place in the hands of the world's non-self-governing peoples the means of securing their own human rights, through the design of their own institutions. Human rights are most typically abused by States which have annexed, absorbed or dominated other peoples involuntarily. Coerced assimilation and coerced segregation are both characteristic evils of these situations. Both restrict dominated peoples' lives to activities useful to others, and inimical to their own welfare. The ultimate goal of the

Implementation of universal self-determination must be, we believe, to eliminate all instances in which the destiny of one people is dictated by the desires and appetites of another. Only this will assuage the jealousies and resentments which have proved a continuing threat to world peace.

Looking around the world today, we observe a curious phenomenon. Peoples of every race, with one exception, have been achieving self-determination and decolonization under the auspices of the United Nations. There are independent States today of every colour, save one. Is this a temporary oversight, or the result of institutionalized discrimination?

We observe, first that the 'Indians' of the Americas are never described in the United Nations as 'peoples' but as 'indigenous populations'. We understand that a 'people', in international law, is determined by a common history, language, culture and geography, whether or not it has acted or been recognized as an independent State. This being the case, 'indigenous' Americans must be 'peoples', unless somehow their race disqualifies them from equal consideration. But such an institutionalized racial distinction would of course be impermissible.

We note, further, that 'indigenous' Americans' history of conducting relations with European powers by treaty has been consistently disregarded in determining whether these peoples are, or have the right to form States. The Mikmaq people, for example, negotiated treaties with France, the United Kingdom and the United States. Other American peoples made treaties with European States as late as the 1920s. Treaty relations are evidence of international recognition of statehood, and recognition, once given, cannot ordinarily be withdrawn. Yet we find in the reports of international arbitration and human rights proceedings an assumption that treaties made with peoples of the 'Indian' race are not treaties at all, and have no international legal consequences. The United Nations cannot afford to admit that a document calling itself a 'treaty' and signed by the representatives of two 'nations' is without effect, merely because one of the nations signing it is of the wrong race.

Lastly, we note that the legal doctrine of terra nullius, although expressly condemned by the International Court of Justice in 1975, and implicitly by Article 1 (b) of the International Covenants on Human Rights, continues to be asserted successfully against indigenous Americans. It is the entire legal basis of colonizing powers' claims to the North American Arctic, and to roughly

one-fifth of the rest of that continent, albeit in several instances some nominal retroactive compensation has been paid. These powers also assert a continuing right to appropriate remaining indigenous territories on the grounds of 'plenary power', 'parliamentary supremacy' or 'trusteeship' - little more in reality than the assertion of unrestricted jurisdiction and authority over involuntarily annexed and encircled peoples, on the basis of racial and cultural superiority.

All of these objections have been raised against ourselves.

We do not doubt that there are some indigenous American groups which properly can be described as national minorities, having freely and unambiguously incorporated themselves with the colonizing powers. But to assert as a matter of general international principles or policy that all populations of the 'Indian' race are thus incorporated, is an institutionalized form of racism denying peoples of one colour any hope for self-determination.

It has been 400 years since the international jurist Francisco de Vitoria wrote that 'Indian' communities in the Americas were States entitled to the same rights and freedom as European States. It is extraordinary that this point must be reaffirmed today.

It is imperative to distinguish situations involving racist exclusions from full citizenship, and racist denials of self-determination. Carelessly applied without regard to history, the imperative international norm against racial discrimination can be used to justify the coerced cultural assimilation and legal incorporation of captive peoples. Colonized or lawlessly annexed peoples should never be denied the right to self-determination on the pretence that they must become 'equal' with citizens of the colonizing State. Whether a particular people should be emancipated through decolonization or through integration is, above all, a matter of choice and of self-determination for that people themselves.

The Working Group should avoid suggesting standards for combating racism which conflict with indigenous groups' collective self-determination. Self-determination has been referred to in the 1973 Programme for the Decade for Action to Combat Racism and Racial Discrimination (sec. 1 (d): the United Nations has recognized 'the legitimacy of the struggle of all oppressed peoples, in particular in the territories under colonial, racial or alien domination'); in the Declaration of the 1978 World Conference to Combat Racism and Racial Discrimination (sec. 5: 'denial of the right of peoples under colonial or foreign domination to self-determination' is one of the 'root causes of discrimination and tension'); and

by the Working Group on Indigenous Populations of the Commission on Human Rights in its 1982 first annual report. Principles for resolving conflicts between individual equality and self-determination have not yet been identified, however.

In light of this, we suggest that the following comments be included in the final report of this session:

Assertion that the indigenous populations of the Americas are not 'peoples' within the meaning of international law, that treaties formerly made with them have no obligatory force, or that their lands can be appropriated without their consent as terra nullius or otherwise, is racist and impermissible.

The Convention on the Elimination of All Forms of Racial Discrimination does not require the involuntary assimilation of lawlessly annexed or colonized peoples under the pretence of eliminating racial discrimination, where the result would be the denial of their right to self-determination."