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MADAME CHAIR:

WE WOULD LIKE TO TAKE SOME BRIEF MOMENTS TO COMMENT IN GENERAL
TERMS ON THE PROGRESS BEING MADE TOWARD A UNIVERSAL DECLARA-
TION OF THE RIGHTS OF INDIGENOUS PEOPLES.

AS YOU KNOW MADAME CHAIR, THE INDIAN LAW RESOURCE CENTER HAS BEEN
INVOLVED IN THE WORK OF THE WORKING GROUP SINCE ITS CREATION, AND
THE NATIONAL INDIAN YOUTH COUNCIL HAS PARTICIPATED IN EVERY
SESSION OF THE WORKING GROUP SINCE NINETEEN EIGHTY-FOUR.

WE HAVE PERCEIVED THE OBJECTIVES OF THE WORKING GROUP'S STANDARD
SETTING EXERCISES AS ESSENTIALLY TWOFOLD:

FIRST, THE STANDARD-SETTING WORK IS AIMED AT PROMOTING A BODY
OF INTERNATIONAL NORMS TO ELIMINATE THE OPPRESSION OF INDIGENOUS
PEOPLES. WE WHOLLY SUPPORT THIS EFFORT, AND WE BELIEVE THAT
FOR THE INTERNATIONAL NORMS TO BE EFFECTIVE, THEY MUST CONTAIN
AT LEAST THREE ELEMENTS. IN THE FIRST PLACE, THE CONTENT OF THE
NORMS MUST REFLECT THE ASPIRATION OF INDIGENOUS PEOPLES.

SECONDLY, THE NORMS MUST BE STRONGLY ROOTED IN A BROAD CONSENSUS
AMONG THE INTERNATIONAL COMMUNITY. THIRDLY, THE NORMS MUST
APPLY TO THE BROAD DIVERSITY OF CIRCUMSTANCES OF THE GLOBAL
MULTITUDE OF INDIGENOUS GROUPS.

IN ADDITION TO THE OBJECTIVE OF A STRONG BODY OF INDIGENOUS
RIGHTS NORMS, A SECOND OBJECTIVE IS A CONTINUOUS MEASURE OF
INTERNATIONAL SCRUTINY WITH RESPECT TO THE CONDITIONS OF
INDIGENOUS PEOPLES. WE STRONGLY SUPPORT THIS OBJECTIVE AS
WELL.

IN WORKING WITH WITH INDIGENOUS PEOPLES THROUGHOUT THE AMERICAN
CONTINENTS, OUR EXPERIENCE HAS BEEN THAT REGARDLESS OF THE
CONTENT OF APPLICABLE LEGAL NORMS, MUNICIPAL OR DOMESTIC SYSTEMS

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OFTEN REMAIN UNRESPONSIVE TO INDIGENOUS PEOPLES' CONCERNS. INTERNATIONAL PROCEDURES AND MECHANISMS ARE NEEDED TO ENSURE RESPONSIVENESS TO INDIGENOUS PEOPLES' DEMANDS.

MADAME CHAIR, WE BELIEVE IT IS IMPORTANT TO REFLECT ON THE PROGRESS ALREADY MADE BY THE WORKING GROUP TOWARD THE OBJECTIVES WE HAVE IDENTIFIED. UNDER YOUR LEADERSHIP, MADAME CHAIR, THE WORKING GROUP HAS PROMOTED AND EXTENDED USEFUL DIALOGUE ON THE CONTENT OF INDIGENOUS PEOPLES' RIGHTS. THIS DIALOGUE, IN CONJUNCTION WITH OTHER DEVELOPMENTS BOTH INTERNATIONAL AND DOMESTIC HAVE ALREADY GIVEN RISE TO BROAD CONSENSUS OF INTERNATIONAL OPINION AROUND A CONSTELLATION OF PRINCIPLES FAVORABLE TO INDIGENOUS PEOPLES' DEMANDS. THE CONSENSUS AMONG STATES AND OTHER RELEVANT ACTORS CLEARLY HAS NOT PROGRESSED AS FAR AS INDIGENOUS PEOPLES DESIRE, BUT THE CONSENSUS THAT DOES EXIST AROUND A DISCERNIBLE SET OF PRINCIPLES CANNOT BE DENIED. IT IS NO LONGER A MATTER OF MUCH CONTROVERSY THAT INDIGENOUS PEOPLES HAVE THE RIGHT TO EXIST AND TO DEVELOP FREELY AS DISTINCT COMMUNITIES, TO RETAIN THEIR CULTURAL IDENTITY AND TRANSMIT IT FREELY TO FUTURE GENERATIONS, TO LIVE WITHIN A GOVERNING INSTITUTIONAL ORDER THAT REFLECTS THEIR SPECIFIC CHARACTERISTICS, TO GENUINELY BE ASSOCIATED WITH ALL DECISIONS AFFECTING THEIR COMMUNITIES, AND TO ENJOY AT LEAST SOME MEASURE OF ENTITLEMENTS TO LANDS. FURTHERMORE, IT IS EVIDENT THAT STATES ACROSS THE GLOBE HAVE BEGUN TO ACT ON THESE PRINCIPLES.

THE WORKING GROUP ALSO REPRESENTS PROGRESS IN THE ENHANCEMENT OF INTERNATIONAL CONCERN FOR THE CONDITIONS OF INDIGENOUS PEOPLES. THE WORKING GROUP HAS BECOME AN IMPORTANT INTERNATIONAL FORUM FOR INDIGENOUS PEOPLES TO VOICE THEIR CONCERNS, AND IN MANY INSTANCES HAS BEEN AN EFFECTIVE ELEMENT FOR DRAWING STATES' ATTENTION AND RESPONSE TO THOSE CONCERNS.

DESPITE THE PROGRESS MADE, WE HAVE SUBSTANTIAL MISGIVINGS ABOUT THE CURRENT DIRECTION OF THE DRAFTING PROCESS. WE NOTE A CONTINUING TENDENCY TO ATTEMPT TO DETAIL WITH EXCESSIVE WORDING THE RIGHTS ARTICULATED IN THE DECLARATION. INDEED, BOTH THE NIYC AND THE ILRC WERE IN THE PAST PARTIES TO EFFORTS TO DETAIL WITH THE GREATEST SPECIFICITY THE RIGHTS TO BE INCLUDED IN A DECLARATION ON INDIGENOUS PEOPLES. NONETHELESS, WE NOW SEE TWO FUNDAMENTAL FLAWS IN THIS APPROACH. FIRST, THE APPROACH IS NOT CONDUCIVE TO A DECLARATION WHICH WOULD APPLY EQUALLY TO DIVERSE CIRCUM-

STANCES OF DIVERSE INDIGENOUS PEOPLES. JUST YESTERDAY, FOR EXAMPLE, WE HEARD AN INDIGENOUS REPRESENTATIVE STATE THAT AN ORIGINALIST INTERPRETATION OF TREATIES WITH INDIGENOUS PEOPLES IS INAPPROPRIATE FOR THE MAORI OF NEW ZEALAND, WHILE ANOTHER PARTICIPANT ASSERTED THAT IT IS VITAL FOR NORTH AMERICAN INDIGENOUS PEOPLES TO HAVE TREATIES INTERPRETED ACCORDING TO THEIR ORIGINAL INTENT.

THERE IS A SECOND AND MORE FUNDAMENTAL CONCERN ABOUT A DETAILED DECLARATION. THE APPROACH INVITES A POTENTIALLY DANGEROUS COMPROMISE IN THE ARTICULATION OF INDIGENOUS PEOPLES' RIGHTS. THE MORE SPECIFIC AND FAR-REACHING THE LANGUAGE PROPOSED, THE MORE WE SEE A TENDENCY FOR GOVERNMENTS TO LIMIT OR QUALIFY THE LANGUAGE. I NEED ONLY REMIND PARTICIPANTS OF THE PROCEEDINGS LEADING TO THE ADOPTION OF ILO CONVENTION NO.169. WE FEAR, IN THE END, A DECLARATION THAT IN ITS DETAIL IS WEAK AND AMBIGUOUS.

WE HAVE SOME PRELIMINARY THOUGHT ON THIS MATTER AND ARE PREPARED TO MAKE A SUGGESTION. WE PROPOSE THAT THE WORKING GROUP SUBSTITUTE THE CURRENT APPROACH FOR ONE THAT FOCUSES ON THE ARTICULATION OF BROAD PRINCIPLES CAPABLE OF GENERALIZATION. THE PRINCIPLES SHOULD BE ARTICULATED IN AN OPEN-ENDED MANNER, IN THE SENSE THAT THEY NEITHER LIMIT THE ULTIMATE REACH OF INDIGENOUS PEOPLES' RIGHTS NOR PURPORT TO SETTLE ALL INDIGENOUS PEOPLES' SPECIFIC GRIEVANCES. IN ADDITION TO THE ARTICULATION OF GENERAL PRINCIPLES, THE DECLARATION SHOULD INCLUDE PROVISIONS FOR CONTINUING AND ENHANCED INTERNATIONAL PROCEDURES BY WHICH INDIGENOUS PEOPLES' GRIEVANCES MAY BE HEARD. WE NOTE IN THIS REGARD WITH APPROVAL DRAFT OPERATIVE PARAGRAPH 30 OF THE EXISTING DRAFT DECLARATION.

MADAME CHAIR, WE ARE MINDFUL THAT OUR PROPOSAL MAY BE MISINTERPRETED AS A CONCESSION TO A WEAK DECLARATION. TO THE CONTRARY, WE ARE LOOKING FOR THE STRONGEST POSSIBLE DECLARATION THAT HAS THE NEEDED BACKING OF THE INTERNATIONAL COMMUNITY^{AND} THAT IS CAPABLE OF EFFECTIVE APPLICATION IN DIVERSE SETTINGS. MORE IMPORTANTLY, WE ARE LOOKING BEYOND THE DECLARATION. WE BELIEVE THAT A STRONG BODY OF INTERNATIONAL NORMS HAS THE BEST CHANCE OF EVENTUALLY DEVELOPING FROM A UN DECLARATION THAT SETS PRINCIPLES THAT ARE SIMPLE, OPEN-ENDED, AND ROOTED IN A BROAD CONSENSUS OF OPINION IN THE INTERNATIONAL COMMUNITY, AND THAT

PROMOTES PROCEDURES FOR ENHANCED INTERNATIONAL COMPETENCY OVER INDIGENOUS PEOPLES' CONCERNS. THE SPECIFIC CONTOURS OF THE ARTICULATED PRINCIPLES AND DERIVATIVE RULES WOULD NOT BE PREJUDICED BUT RATHER ALLOWED TO DEVELOP OVER TIME. THIS WOULD OCCUR THROUGH CONTINUED DIALOGUE AT THE INTERNATIONAL LEVEL AND ESPECIALLY THROUGH THE APPLICATION OF THE PRINCIPLES IN SPECIFIC CONTEXTS CONCERNING PARTICULAR INDIGENOUS GROUPS.

THERE IS AN IMPORTANT SCHOOL OF INTERNATIONAL JURISPRUDENCE THAT HAS OBSERVED THAT THE ARTICULATION OF NORMS IN THE ABSTRACT IS OF LIMITED UTILITY. RATHER, IT IS THROUGH THE APPLICATION OF WIDELY SHARED VALUES TO ADDRESS PARTICULAR PROBLEMS THAT NORMS MOST MEANINGFULLY AND APPROPRIATELY DEVELOP THEIR SPECIFIC CONTOURS. MOREOVER, WE MUST KEEP IN MIND WHAT IS ULTIMATELY AT STAKE HERE. AT STAKE IS THE ACTUAL, REAL IMPROVEMENT OF CONDITIONS FOR THE WORLD INDIGENOUS PEOPLES, NOT THE WORDS IN WRITTEN INSTRUMENTS.

AGAIN, MADAME CHAIR, I STRESS THAT THESE ARE PRELIMINARY THOUGHTS WE WILL BE SUBMITTING PROPOSED ALTERNATIVE LANGUAGE FOR THE DECLARATION. WE INVITE REACTION TO OUR COMMENT, BY MEMBERS OF THE WORKING GROUP AS WELL AS BY OTHER PARTICIPANTS AT THIS SESSION.