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United Nation Permanent Forum on Indigenous Issues Seventh Session
New York, April 21 to May 2, 2008.

Joint Statement Submitted by the Indigenous Peoples Caucus of the Americas

Item 4.1: Implementation of the UN *Declaration on the Rights of Indigenous Peoples*

Presented by Celeste McKay, North America Co-Chair, Indigenous Peoples Caucus of the Americas

Respectful Greetings Madame Chair and all delegations.

I am making this statement on behalf of the Indigenous Peoples Caucus of the Americas attending the recently concluded 11th session of Negotiations for the development of the American Declaration on the Rights of Indigenous Peoples, in which Indigenous Peoples of North, Central, South America and the Caribbean were represented. Indigenous Peoples and many states noted the historic significance of this negotiating session, the first to be held after the adoption on the UN Declaration by the General Assembly in September 2007.

In its opening statement the first day of the session, April 14th 2008, the Caucus took note of the Report of the Chair on the Session of Reflection on the meetings of negotiations for the search of the consensus (OEA/Ser.K/XVI GT/DADIN/doc.321/08). The Chairman's report stated that "The majority of States and all of the indigenous representatives supported the use of the UN Declaration as the baseline for negotiations and indicated that this represented a minimum standard for the OAS Declaration."

The Caucus' opening statement further underscored that "Our work on the American Declaration must be undertaken with the intention to reiterate and reinforce key areas and aspects of the UN Declaration. These include, among others, the right to self-determination, free, prior and informed consent and rights to traditionally owned and used lands, resources and territories".

The Caucus ~~also~~ affirmed the well-recognized principle that a regional human rights standard cannot fall below an international standard.

The Caucus ~~also~~ recognized that the two states from North America, the United States and Canada, voted against the adoption of the UN Declaration at the General Assembly, and continue to maintain the position that the UN Declaration does not apply to them and therefore should not be the minimum standard for the OAS Declaration or other international discussions in which they participate.

The Caucus' opening statement strongly challenged these claims and highlighted two important recent developments which demonstrate that this position is not valid, as follows:

"On March 7th 2008, the United Nations Committee on the Elimination of Racial Discrimination (CERD) released its recommendations in response to the United States' Periodic Report submitted to the Committee last year. The CERD recommended that the UN *Declaration on the Rights of Indigenous Peoples* be used by the US as a "guide to

interpret the State Party's obligations under the Convention relating to Indigenous Peoples". This recommendation supports the position of Indigenous Peoples and a number of international legal experts, and ^{which ties} ~~ties~~ the implementation of the UN Declaration to the legally binding obligations of all state parties to the Convention on the Elimination of all Forms of Racial Discrimination, even states which voted against the Declaration's adoption.

In addition, on April 8th, 2008, the House of Commons in Canada passed a motion calling on the Canadian Government to "endorse the United Nations *Declaration on the Rights of Indigenous Peoples* as adopted by the UN General Assembly on 13 September, 2007 and that Parliament and Government of Canada fully implement the standards contained therein".

The Caucus also noted that most other American States at the November ²⁰⁰⁷ meeting chose to reaffirm their international commitments and agreed to take further steps in negotiating a draft American Declaration that is consistent with international law.

The Government of Canada had made it clear at recent sessions on the American Declaration on the Rights of Indigenous Peoples that it would continue to oppose the UN Declaration as the minimum standard in these negotiations. For example, at the OAS Meeting of Reflection held in November 2007 in Washington, D.C., Canada had stated that the "Government of Canada cannot accept the UN Declaration text as the starting point or minimum outcome for these negotiations [on a draft American Declaration]. Trying to impose the UN Declaration text will doom these negotiations to failure."

In its statement on April 14, 2008, the first day of the 11th negotiating session of the OAS Working Group, Canada reiterated its previous objection, but went even further. Canada indicated that it would attempt to block consensus, unless the following two conditions were met: "the document adopted clearly indicated that Canada did not give its support" and the Declaration included "an explicit understanding that the Declaration text therefore did not apply to Canada."

In response, a consensus statement was issued by the Indigenous Peoples Caucus of the Americas attending the session, and was presented in the Working Group plenary session on April 15th and widely disseminated throughout the Americas. The Caucus statement affirmed that "These conditions are inconsistent with the rule of law, international practice and domestic precedent within Canada and are, therefore, inappropriate, unacceptable and discriminatory. ...In addition, Canada is seeking to create a dangerous precedent within the OAS. This would severely undermine the principle of international cooperation that is a crucial element of the *UN Charter* and the *OAS Charter*. It would also undermine the progressive development of human rights within the Hemisphere."

The response by the Indigenous Peoples Caucus also addressed the position taken at this session by the United States, noting that "the United States' position has deteriorated from the general reservation which it took at the tenth negotiation session in April 2007 in Bolivia". In fact, the United States stated that it would "not join in any text that might be

approved or otherwise appear in the Chair's rolling text" as a result of this 11th negotiation session and it would also reserve its position on the final text.

The caucus response affirmed that "the refusal of the United States to constructively engage in this negotiations process violates its duty to consult with sovereign Indigenous nations and to uphold its obligations under treaties it has made with Indigenous nations."

The Caucus statement further asserted that "...These two States with their positions of "reservations" constitute a pre-emptive veto on the consensus that we are building with the great majority of States and representatives of Indigenous peoples for a draft American Declaration that is consistent with the *UN Declaration on the Rights of Indigenous Peoples*."

Copies of the full statements by Indigenous Peoples Caucus of the Americas excerpted above are attached to this intervention to the UN Permanent Forum.

In closing, we thank you for taking these important updates regarding the implementation of the UN Declaration into account, and for reaffirming the obligation of all UN member states to uphold this now-adopted international standard.

I would just like to add that the concerted action needed for Canada to take effective anti-