

projects with Indigenous people from other parts of the world who have experienced the effects of these projects and who have been seeking strategies to control the developments which are effecting their communities.

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Following is a draft of an International Covenant on the Rights of Indigenous Peoples. This Covenant is to be discussed at the WCIP Fourth General Assembly where it is hoped the Covenant may be officially adopted. Comments and criticisms in regards to the Covenant are most welcome and may be forwarded to the WCIP Secretariat in Lethbridge, Canada.

INTERNATIONAL COVENANT ON THE RIGHTS OF INDIGENOUS PEOPLES

Preamble

The parties to the present covenant:

Considering that the recognition of the inherent dignity and the equal and inalienable rights of individuals and of peoples is the foundation of freedom, justice and peace in the world, and considering that these principles are recognized and proclaimed in the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the European Convention on Human Rights and the Inter-American Convention on Human Rights,

Conscious of the need for the creation of conditions of stability and well-being and peaceful and friendly relations based on respect for the principles of equal rights and self-determination of all peoples, and of universal respect for and observance of human rights and fundamental freedoms of all without distinction as to race, sex, language or religion,

Recalling that Convention 107 and Recommendation 104 of the International Labour Organization, 5th June 1957, recognized the need for the adoption of general international standards to govern the relations between Indigenous Peoples and states,

Recalling that the Declaration of the General Assembly on the Granting of Independence to Colonial Countries and Peoples, Resolution 1514 (xv), 14th December 1960, recognized the ardent desire of the peoples of the world to end colonialism in all its manifestations,

Recalling that the inter-relationship of racial equality and decolonization was recognized in the Resolution of the General Assembly, Resolution 20166 (xx) B, 15th December 1965, associated with the adoption of the International Convention on the Elimination of All Forms of Racial Discrimination,

Considering that colonialism and the consequences of colonialism have not been eradicated for Indigenous Peoples, and, in consequence, Indigenous peoples are frequently denied their political, economic, social and cultural rights,

Recognizing that the rights of Indigenous Peoples to self-determination is accepted in international law and has been increasingly given effect in

the domestic law of States, and

Recognizing the long struggle by Indigenous Peoples to have their rights recognized in international law; agree on the following articles;

Part I
SELF-DETERMINATION

- Article 1. All peoples have the right to self-determination. By virtue of that right Indigenous Peoples may freely determine their political status and freely pursue their economic, social and cultural development. ~~.....~~
- Article 2. The term Indigenous People refers to a people:
- a) who lived in a territory before the entry of a colonizing population, which colonizing population has created a new state or states or extended the jurisdiction of an existing state or states to include the territory, and
 - b) who continue to live as a people in the territory and who do not control the national government of the state or states within which they live.
- Article 3. One manner in which the right of self-determination can be realized is - by the free determination of an Indigenous people to associate their territory and institutions with one or more states in a manner involving free association, regional autonomy, home rule or associate statehood as self-governing units. Indigenous People may freely determine to enter into such a relationship and to alter those relationships after they have been established.
- Article 4. Each state within which an Indigenous People lives shall recognize the population, territory and institutions of the Indigenous People. Disputes about the recognition of the population, territory and institutions of an Indigenous People shall initially be determined by the state and the Indigenous People. Failing agreement, such questions may be determined by the Commission of Indigenous Rights and the Tribunal of Indigenous Rights, as subsequently provided.

Part II
CIVIL AND POLITICAL RIGHTS

- Article 1. Each Indigenous People has the right to determine the persons or groups who are included within its population.
- Article 2. Each Indigenous People has the right to determine the form, structure and authority of its institutions of self-determination. Those institutions, their decisions and the customs and practices of the Indigenous Peoples shall be recognized by domestic and international law on a basis of equality and non-discrimination.
- Article 3. Where an Indigenous People exercise their right of self-determination

within one or more states, and that state or states has some extent of jurisdiction over the Indigenous People or over individual members of the Indigenous People,

- a) the individual members of the Indigenous People are entitled to participate in the political life of the state or states on the basis of equality with citizens of the state or states,
- b) the Indigenous People is entitled to representation in the legislative and executive branches of government, the courts and civil service.
- c) it is recognized that it is desirable for the Indigenous People to have a national organization or organizations of their choosing and structure, independent of the organs of the state, to represent their interests in dealing with the state. Where the poverty or the dispersed character of the Indigenous People inhibit the development of such an organization or organizations, the state shall provide funding to the Indigenous People to facilitate the establishment and maintenance of such an organization or organizations.

Part III ECONOMIC RIGHTS

- Article 1. Indigenous People are entitled to the lands they use and to the protection of the extent of use in areas where the use of land is shared in a compatible manner with others, and to those parts of their traditional lands which have never been transferred out of their control by a process involving their free consent.
- Article 2. The need to protect the integrity of the lands of an Indigenous People is recognized. The land rights of an Indigenous People include surface and subsurface rights, full rights to interior and coastal waters and rights to adequate and exclusive coastal economic zones.
- Article 3. All Indigenous Peoples may, for their own ends, freely use and dispose of their natural wealth and resources, without prejudice to any obligation arising out of international economic cooperation, based upon the principle of mutual benefit and international law. In no case may a people or a component unit of a people be deprived of its own means of subsistence.
- Article 4. Where an Indigenous People have an economy reliant in whole or in part on hunting, fishing, herding, gathering or cultivation, they have a right to the territory and the waters used and needed for those pursuits. States are bound to respect such territories and waters and not act or authorize acts which could impair the ability of such lands and waters to continue in such use.

Part IV SOCIAL AND CULTURAL RIGHTS

1. The cultures of the Indigenous Peoples are part of the cultural heritage of mankind. The shared beliefs of Indigenous People in cooperation and

harmonious relations are recognized as a fundamental source of international law.

2. The primary responsibility for the protection and development of the cultures and religions of the Indigenous People lies with the Indigenous People. To this end the original rights to their material culture, including archeological sites, artifacts, designs, technology and works of art lie with Indigenous People or members of the Indigenous People. Indigenous People have the right to reacquire possession of significant cultural artifacts presently in the possession of public or semi-public institutions, where possession of those artifacts was not obtained from the Indigenous People in a just and fair manner or where the artifacts are of major cultural or religious significance to the Indigenous People.
3. The Indigenous People have the right to fully control the care and education of their children, including the full right to determine the language or languages of instruction.
4. The Indigenous Peoples have the responsibility for the preservation and development of their languages. Their languages are to be respected by states in all dealings between the Indigenous People and a state on the basis of equality and non-discrimination.

Part V
RATIFICATION AND IMPLEMENTATION

- Article 1. This Covenant shall be open to ratification by states and by Indigenous Peoples.
- Article 2. To ensure the fulfillment of the provisions of this Covenant there shall be established a Commission of Indigenous Rights and a Tribunal of Indigenous Rights.
- Article 3. The duties of the Commission of Indigenous Rights are:
- a) to receive and assess the reports of the states and of the Indigenous Peoples who are parties to this Covenant.
 - b) to receive and assess petitions alleging the violation of the rights of Indigenous Peoples in contravention of the provisions of the present Covenant.
 - c) to determine the appropriate recognition of the population, territory and institutions of an Indigenous People by a state, in compliance with Part I, Article 4.
 - d) to investigate any petitions alleging the violation of the rights of Indigenous Peoples, with the power to require documents from state parties with a right of access to officials of the state parties and with access to Indigenous lands, institutions and people within a state.
 - e) to attempt to achieve a peaceful settlement of disputes involving Indigenous rights, by mutual agreement of the parties.
 - f) to determine whether there has been a violation by any state or any Indigenous People of the provisions of the present Covenant.
 - g) to conduct or commission research on matters of Indigenous rights.

to conduct or support educational programs and to publish any reports, studies or determinations.

h) to determine, in cases of dispute, the groups that are Indigenous People with a right of self-determination, subject to an appeal to the Tribunal of Indigenous Rights as subsequently provided. The Commission shall review all ratifications of the present Convention by Indigenous People to determine whether the ratifying group is an Indigenous People with a right of self-determination.

- Article 4. The Commission will be composed of no fewer than 6 and no more than 19 persons. Each commissioner will be an Indigenous person of good moral character.
- Article 5. Three persons will be nominated to the Commission from every state affected by the Covenant. A state is affected by the Covenant if:
- a) it has ratified the Covenant, or
 - b) an Indigenous People living wholly or partly within the state has ratified the Covenant.
- Article 6. If a state has ratified the Covenant, or if an Indigenous People living wholly or partly within the state has ratified the Covenant, three Indigenous persons will be nominated by the most representative Indigenous organization or organizations in the state. The organization or organizations so qualified shall be designated by the Executive Council of the World Council of Indigenous Peoples. If sufficiently representative organizations do not exist, the Executive Council of the World Council of Indigenous Peoples shall designate an individual of the state to make all or some of the nominations.
- Article 7. The members of the Commission shall be selected from the nominees by the Executive Council of the World Council of Indigenous Peoples, which shall also determine the number of Commissioners. Members shall serve terms of four years.
- Article 8. The duties of the Tribunal of Indigenous Rights are to determine, after an investigation and determination by the Commission of Indigenous Rights:
- a) the groups which are Indigenous Peoples with a right of self-determination;
 - b) any question of compliance with this Covenant.
- Article 9. A matter may be taken before the Commission by a state party, an Indigenous party, the World Council of Indigenous Peoples or a person or persons affected by an alleged violation of the rights of an Indigenous People. A matter may be taken before the Tribunal after the investigation and determination of the Commission of Indigenous Rights, by the Commission of Indigenous Rights.

- Article 10. The tribunal may request an advisory opinion from the International Court of Justice on any question of law arising in the course of its work.
- Article 11. The Tribunal will hold public hearings and receive oral or written submissions. Parties may be represented by counsel. No rules of the Tribunal shall exclude any category of evidence.
- Article 12. The Tribunal shall consist of up to 15 persons, 4 of whom will serve on a full-time basis. The members of the Tribunal may be Indigenous or non-Indigenous, shall be of good moral character and shall serve in their individual capacities.
- Article 13. Each state party may nominate one candidate for the Tribunal. Each Indigenous People signatory to the present Covenant may nominate one candidate for the Tribunal. The members of the Tribunal shall be elected by secret ballot by the states and the Indigenous Peoples who have ratified the present Covenant. The elections will be conducted in a manner to ensure that a majority of the members of the Tribunal will be Indigenous people.
- Article 14. The costs of the institutions created pursuant to the present Covenant shall be borne by the United Nations Organization.
- Article 15. Nothing in the present Covenant may be interpreted as implying for any state, group or person any right to engage in any activity or perform any act aimed at the destruction of any rights recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.
- Article 16. There shall be no restriction upon or derogation from any of the rights recognized or existing in any state party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

Part VI REPORTING

- Article 1. Each state and each Indigenous Peoples which has ratified the present Covenant shall report to the Commission on Indigenous Rights every three years, describing fully the situation of the Indigenous People and the extent of compliance with the provisions of domestic and international law, including those of the present Covenant.

Part VII COMING INTO FORCE

- Article 1. The present Covenant is open for signature and ratification by any state and by any Indigenous People. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
- Article 2. The present Covenant shall enter into force three months after

the date of the deposit with the Secretary-General of the United Nations the sixth ratification by a state and the sixth ratification by Indigenous People. Until the establishment of the Commission of Indigenous Rights, the Executive Council of the World Council of Indigenous Peoples shall certify groups to be Indigenous People with a right of self-determination for the purposes of ratification of the present Covenant.

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