



**NATIONAL
CONGRESS
OF
AMERICAN
-INDIANS-**

MEMORANDUM

Date: 11 October, 1983

To: DELEGATES AND MEMBERS

From: International Relations Committee, Ralph Eluska, Chairman

Subject: Hearing concerning the Draft International Covenant on the Rights of Indigenous Peoples

You are invited to present your personal or government's views regarding amendments or modifications in the World Council of Indigenous Peoples sponsored: Draft International Covenant on the Rights of Indigenous Peoples. (See Attached)

The World Council of Indigenous Peoples (WCIP) began a world-wide political process among indigenous peoples to establish new international law designed to protect and enhance Indian and Indigenous rights at its Third General Assembly in 1980. The attached Draft Covenant is the first stage in a 10 year process which began with Indigenous Delegates taking the initiative in Canberra, Australia. This Covenant is not only originated in tribal and national communities like our own, but its existence represents the first time in modern history that Indigenous Peoples have directly participated in the formulation of International Law.

The purpose of the Covenant process is to increase international understanding and attention in the area of Indigenous rights, and to create international opportunities for indigenous populations to exercise political leverage to secure their economic, political and social rights as peoples.

As a member of the WCIP the National Congress of American Indian membership has been invited to participate in the formulation of the new international covenant. Once the Covenant has been ratified by Indigenous groups a new process will be started to gain nation-state support and their ratification. After the various nation-states have ratified the Covenant it will go into force and become binding as new international law.

The Committee on International Relations will hear testimony and comments regarding the Draft International Covenant on the Rights of Indigenous Peoples beginning at 4:00pm on Wednesday, 11 October in the Arena (specific location to be announced). Members of the Committee on International Relations are: Ralph Eluska, Chairman; Juanita Dixon and Russel Jim. Rudy Ryser Counselor, International Relations Portfolio is the Committee Staff person

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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NATIONAL CONGRESS OF AMERICAN INDIANS

Est. 1944

Draft
8 October 1983

NCAI RESOLUTION NO. _____

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INDIAN RIGHTS UNDER INTERNATIONAL LAW: A Resolution
concerning U.S. Indian Support, modification and adoption
of the World Council of Indigenous Peoples' sponsored
"Draft International Covenant on the Rights of Indigenous
Peoples" to be considered for final adoption at the Fourth
General Assembly of the WCIP in June 1984 at Tlahuitolpec,
Mexico.

1.0 Statement of Findings:

Over a period of more than two hundred years, Indian Nations located inside what is now asserted to be the United States of America have concluded treaties and agreements among themselves and with the states of the United Kingdom, France, Spain the Netherlands, Russia and the United States of America. These treaties and agreements are international instruments of "peace and cooperation", "land cession" and or security compacts to preserve the sovereign distinction of Indian nations and preserve their international personality as peoples.

Despite these treaties and agreements, newly formed nation-states like the United States of America and older states like the United Kingdom and the Netherlands have systematically worked to suppress the original sovereign identity of Indian and other indigenous nations through the enactment of certain domestic laws. These laws have been aimed at the ultimate assimilation of indigenous peoples under nation-state control. The suppression of the identity of Indian nations has worked to shroud the international identity and personality of Indian peoples.

1.2 The domestic denial and suppression of Indian sovereignty, and the confiscation of Indian lands and natural wealth have forced Indian nations into economic and political dependence on the United States. This dependence has not improved the economic and political development of Indian Nations, but placed them in a continual state of economic, social and political distress. By this process Indian Rights and sovereignty have not been protected, but rather eroded by the United States of America.

1.3 Under ordinary circumstances the rights of Indian peoples would be ensured under international law in accordance with the "law of nations" and new international law. Just

as the United States of America and other nation-states have worked to promote assimilation under domestic laws, nation-states have worked to deny Indian sovereignty and promote assimilation in international law.

1.4 Several major pieces of international legislation have been passed into law among nation-states which directly affect Indian Rights and sovereignty. These include:

- a. Convention (No.50) Concerning the Regulation of Certain Special system of Recruiting Workers (Indigenous Peoples). International Labour Organization (ILO) Geneva, Switzerland: 8, Sept. 1939.
- b. Convention (No. 82) Concerning Social Policy in non-Metropolitan Territories, ILO, Geneva, Switzerland: 1947. Coming into force 19 June 1955.
- c. Convention (No. 107) Concerning the Protection and Integration of Indigenous and other Tribal and Semir Tribal Populations in Independent Countries. ILO, Geneva, Switzerland, 1957: coming into force 2 June 1959.
- d. Inter American Treaty on Indian Life, Currently under the Organization of American States administration. 1944.

1.5 These international laws refer to indigenous rights and Indian Rights. Like U.S. law, they are designed to promote the "integration" or assimilation of Indian peoples through cooperation between nation-states. Indigenous peoples are described as "populations" and not as peoples or nations and, therefore, are not considered eligible to be treated as "peoples" under other international law. By denying Indians the status as "peoples" nation-states have generally barred Indian rights and Indian selfdetermination as a matter for consideration under international statutes.

1.6 Recognizing both domestic and international suppression of Indian rights as an obstacle to the free development of Indian Peoples, the World Council of Indigenous Peoples adopted, in principle, a "Draft International Covenant on the Rights of Indigenous Peoples" at its Third General Assembly in Canberra, Australia in the Spring of 1980. The NCAI sent a delegation to the WCIP General Assembly which played a direct role in the formulation of the Draft Covenant. The WCIP invited member organizations to review the Draft International legislation and return to the Fourth General Assembly in Tlahuitolpec, Mexico in June, 1984 with suggestions for amendments and final adoption. The proposed Covenant requires that International law become applicable to Indigenous peoples in the same way it is applied to other nations in the world.

1.7 In November 1979, the United States of America officially altered its position of opposing the application of international law to Indian Rights. The U.S. government announced to other nation-states signatory to the Helsinki Final Act that: "Indian Rights issues fall under both Principle VII of the Helsinki Final Act, where the rights

national minorities are addressed, and under Principle VIII, which addresses equal rights and the self-determination of peoples.

1.8 Under the Helsinki Final Act, Principle VIII the United States notified other nation-states of its pledge to apply and uphold international covenants (including the UN Charter) in its relations with organized Indian and native nations and communities.

1.9 On August 10, 1983 the NCAI notified the United Nations Working Group on Indigenous Populations in Geneva, Switzerland, through a diplomatic transmission, that the United States of America had changed the international standards concerning the rights of Indian peoples by virtue of its representations under the Helsinki Final Act. Actions of the United Nations, the WCIP and the United States of America in the field of international law demand a response by member governments of NCAI. The Draft International Covenant on the Rights of Indigenous Peoples constitutes a direct and immediate means by which Indian peoples and their governments may protect and advance Indian Rights within the framework of International relations.

2.0 WHEREAS, in consideration of the founding principles upon which the National Congress of American Indians Constitution is based, where member Indian Governments and peoples are committed to the preservation of Indian cultural values, the equitable adjustment of Indian Affairs, the preservation of Indian Rights, the promotion of the common welfare of the American Indian; and a better understanding of Indians, and

2.1 WHEREAS, Recalling Resolution #55, 1950 where the NCAI reaffirmed the Indian Right of Self-government, and

2.2 WHEREAS, Recalling Resolution #1, 1966 where NCAI in the 23rd Annual Convention established a long-range policy to achieve self-determination among Indian peoples,

2.3 WHEREAS, Reminded of the American Indian Declaration of Sovereignty 1974, adopted by the 31st Annual Convention, declaring the "inherent sovereign rights and powers of self-government to Indian nations without interference", and

2.4 WHEREAS, Recalling the Tribal/Global Relations Policy and Action Plan for the 80's, 1980, adopted by the 37th Annual Convention; objective #6 directs NCAI to "promote and facilitate the development of internationally binding laws which ensure recognition of tribal peoples' permanent sovereignty over their territories", and,

2.5 WHEREAS, Reminded that the National Congress of American Indians is a Charter member of the World Council of Indigenous Peoples from 1975.

3.0 NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians, meeting in 40th Annual Convention in Greenbay, Wisconsin does endorse and approve the Draft International Covenant on the Rights of Indigenous Peoples in principle, and suggests certain amendments, adjustments and/or modifications to be subsequently attached to this resolution, and

- 3.1 BE IT FURTHER RESOLVED, That the NCAI Delegation to the Fourth General Assembly of the WCIP in Tlahuitolpec, Mexico is directed to present the attached ammendments, adjustments and/or modifications for consideration by the WCIP General Assembly, and
- 3.2 BE IT FURTHER RESOLVED, that this Resolution and Attachments be transmitted to the WCIP Secretariat, and
- 3.4 BE IT FINALLY RESOLVED, that the National Congress of American Indians shall consider final ratification of the International Covenant on the Rights of Indigenous Peoples at the 41st Annual Convention.

C E R T I F I C A T I O N