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ON THE EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS POPULATIONS

Statement of the National Congress of American
Indians before the United Nations Working
Group on Indigenous Populations; 10 August,
1983, Palais De Nations, Geneva, Switzerland.

Purpose:

To convey to the United Nations Working on Indigenous Populations of the Commission on Human Rights Sub-commission on Prevention of Discrimination and Protection of Minorities the views of the National Congress of American Indians regarding the "evolution of standards concerning the rights of indigenous populations" as noted at Part two of the UN Economic and Social Council Resolution 1982/34. And, further, it is the purpose of the National Congress of American Indians to transmit, by way of annexes to this statement, certain relevant documents developed by the United States of America and by the National Congress of American Indians having a bearing on the considerations of the Working Group.

Description of the National Congress of American Indians:

The National Congress of American Indians (NCAI) was founded in 1944 and has over the years become the leading intertribal organization advocating Indian Rights in relations with the United States of America. NCAI's member Indian Governments have sought the full implementation of treaties, executive orders and agreements with the United States in fulfillment of ancient aboriginal rights. (See Annex A for detailed Background Statement). NCAI is affiliated with the World Council of Indigenous Peoples which is recognized as having category status II by the UN.

Indian and Native national sovereignty and the Political
Relationship to the United States of America:

Indian and native nations and communities have historically claimed and never relinquished their inherent sovereignty and right of self-determination as an exclusive right separate from that of the United States of America. The current political relationship which is in the nature of a trusteeship is predicated, in part, on provisions of bilateral and multilateral Treaties, Executive Orders and Agreements concluded between Indian nations and the United States since 1787. By virtue of these agreements, Indian nations have generally concurred in a relationship of association under the protection of the United States of America. The United States government has described this relationship as one involving a greater power (trustee) protecting lesser powers (beneficiaries of the trust) without reducing or altering the sovereignty of the lesser powers. The United States government has gone further to assert that distinct Indian peoples constitute "domestic dependent nations".

From such assurances issued from the U.S. government Indian Nations have consistently asserted their right to self-government and the right to determine their own political future without interference from the United States Government.

Though geographically surrounded by the United States of America, Indian nations remain separate from the U.S. system of government (the federal system) and are, therefore, politically outside of the United States of America. The U.S. Constitution does not include the more than 500 Indian governments within its federal system. Indian governments and peoples are excluded from sharing political power within the U.S. system of governance. As some observers have noted: Indian nations are not now nor have they ever been a part of the United States system of governance.

In the light of this political reality, the pursuit of political, economic, social and cultural self-determination by Indian nations cannot be regarded as a form of separatism. This is so only because Indian Nations are not a part of the United States in the first instance. It is a logical absurdity to suggest that Indian national

self-determination can lead to the "dismemberment of an existing state" when as nations, as peoples, they have never been a part of an existing state.

Despite this clear and fundamental political separation between Indian Nations and the United States, the government of the United States claims absolute domain over Indian peoples and their territories. This is asserted despite the fact that each Indian nation predates the formation of the organized state and there has been no conveyance of such authority to the United States. The United States has proclaimed itself the ruler over Indian peoples and territories without the consent of the Indian Nations themselves. The suppression of Indian original sovereignty by the United States government is a principle obstacle to the achievement of Indian self-determination.

The United States has established a new International Standard concerning Indian Rights.

In November 1979, the United States of America officially announced to other states signatory to the Helsinki Final Act that: "Indian rights issues fall under both Principle VII of the Helsinki Final Act, where the rights of national minorities are addressed, and under Principle VIII, which addresses equal rights and the self-determination of peoples." (Annex B: "Report of the Commission on Security and cooperation in Europe, 'Fullfilling our Promises: The United States and the Helsinki Final Act'", page 149)

The United States of America took a revolutionary step toward clarification of international standards concerning the rights of Indian peoples. Placing itself under the scrutiny of other States to implement Principle VII and Principle VIII in relation to Indian Nations, the United States has committed itself to conduct its relations in accord with the law of nations and new international law evolved since the founding of the League of Nations.

In accord with Principle VII of the Helsinki Final Act, the United States has pledged itself to applying and upholding inter alia the International Covenants on Human Rights in its dealings with individual Indians and natives as persons. This has particular significances for those tribal people who were relocated away from

Indian territories by the United States government and now reside in non-Indian urban and rural localities.

In accord with Principle VIII of the Helsinki Final Act, the United States of America has solemnly pledged itself to applying and upholding international covenants including the United Nations Charter in its dealings with organized Indian and native nations and communities. Principle VIII applies to United States government dealings with "recognized tribes", "unrecognized tribes" and "terminated tribes".

Two points are of special significance in the light of United States placement of Indian Rights under Principle VIII.

1. The United States of America is the first State in the Western Hemisphere to assert that Indian nations are "peoples" within the meaning of the UN Charter and relevant International Covenants.
2. The United States of America has elevated its obligation to Indian Nations under domestic law to an international responsibility which must be carried out in accord with the law of nations, UN Charter and International covenants which clearly state the necessity for more powerful nations to elevate weaker peoples to a position of equality so they may exercise their rights as peoples, and exercise the right of self-determination.

The recognition of Indian nations as "peoples" and the commitment to promote "effective exercise of equal rights and self-determination of peoples for the development of friendly relations among all states" (Helsinki Final Act, Principle VIII) by the United States creates a commitment to apply provisions of at least the following International agreements to Indian/U.S. relations:

1. Convention on the Prevention and Punishment of the Crime of Genocide (1951)
2. International Covenant on Political and Civil Rights (1966) Articles 1, 2, 26, and 27. UN General Assembly resolution 2200 A (XXI) of 16 December 1966 -- March 1976 in Force.
3. International Covenant on Economic, Social and Cultural Rights (1966) UN General Assembly resolution 2200 A (XXI) of 16 December 1966 -- January 1976 in force.

4. Declaration on the Granting of Independence to Colonial Countries and Peoples (1960) UN General Assembly resolution 1514 (XV) of 14 December 1960
5. General Assembly Resolution 1803 (XVII) of 14 December 1962, "Permanent sovereignty over Natural Resources."
6. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery. Article 1.
7. International Convention on the Elimination of all Forms of Racial Discrimination (1965) UN General Assembly resolution 2106A (XX) on 21 December 1965. Article 1,2,3,4,5.
8. Convention on the Protection of Indigenous and other Tribal and Semi-tribal Populations in Independent Countries (1957) Article II and Recommendation 104.

United States Announces Government-to-Government Policy:

On January 14, 1983 the President of the United States of America announced a policy to establish "government-to-government" relations with Indian Nations (Annex C Part 3, "Statement by the President: Indian Policy"). The National Congress of American Indians accepted "in principle" the U.S. President's new policy. (Annex C Part 2, Public Statement) NCAI further refined its response on June 15, 1983 by calling for a specific process for government-to-government relations (Annex C Part 1) The Indian and United States efforts to arrange formal procedures have been hampered , but they do reflect serious steps to formally establish a new standard for Indian Rights.

The National Congress of American Indians requests the opportunity to further report the substance of U.S./Indian nation relations at another time. We believe the Working Group should closely monitor the recently begun "government-to-government" policy process during the next twelve months. We firmly request that the Working Group take the initiative to invite the United States Government to present its perspective regarding the content of this submission.

We further request that the Working Group transmit this submission in its entirety to the Sub-Commission on Prevention of Discrimination and Protection of Minorities.