

COMMISSION OF HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Populations
Fourth Session
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STATEMENT ON THE STANDARD SETTING ACTIVITIES OF THE WORKING GROUP

by

Coalition of First Nations

under the International Indian Treaty Council (Consultative Status II)

At the First Session of the Working Group, a member established a distinction between problems of discrimination against indigenous populations on one hand, and problems linked to the self-determination of indigenous populations on the other. In that respect he expressed the view that the Working Group was not the proper organ to deal with the latter problem, if it was posed as a question of the rights of "peoples" which would then fall within the competence of other bodies of the United Nations (E/CN 4/Sub 2/1982/33/p.7, para.8). At the 1984 Session indigenous organizations stressed that the term "indigenous populations" be changed to "indigenous peoples" as accurately reflecting our reality, the right to self-determination being tied to indigenous peoples. Our position is that the Working Group should concentrate on evolving standards concerning the rights of indigenous peoples. Our rights are not within a minority rights framework but rather recognition of our rights as peoples. The existing political framework set up to deal with the rights of indigenous populations evolves within and is now established within a minority context.

The classification of indigenous peoples as minorities and the denial of recognition as peoples has a long historic tradition behind it. In a memorandum from 1950, the Secretary-General clearly pointed out to the Sub-Commission that within the proposed framework of minorities they had a group of people on their hands who:

- "1. descended from groups which existed before the establishment of the state
2. were compulsorily brought within the jurisdiction of the state usually in comparatively recent times
3. desires not only preservation and further development of its distinguishing characteristics but also desires to attain administrative autonomy, or full independence..." (E/CN 4/Sub/2/85)

The Sub-Commission chose not to respond to this but proceeded in attempting to define "minorities", finally at its Fifth Session in 1954 recommended to the Commission a draft resolution based on certain elements, among others that "such minorities must be loyal to the state of which they are nationals." Among the factors the Sub-Commission felt should be taken into account was "the risk of taking measures that might lead themselves to misuse amongst a minority whose members' spontaneous desires might be disturbed by parties interested in fomenting amongst them a disloyalty to their state in which they live" (E/CN 4/Sub 2/149). These quotes provide part of the political reason why indigenous populations were not recognized as a unique group that did not belong within the framework of minorities. The draft resolution was referred back to the Sub-Commission by the Commission for further study, and no definition on minorities has been found up until today. From then on it was clear that all work on minorities would not encourage secessionist tendencies within the minority groups, but rather aim at integration. In accordance with that attitude, the work concentrated on fighting discrimination against the individual, hence the formulation of Article 27 in the Covenant on Civil and Political Rights which does not envisage group autonomy or institutional safeguards.

Given the fact that no definition of the term "minorities" has been found for 30 years, we would observe that at the other end of the spectrum, within the framework of decolonization, no such problems with definition seem to exist. The General Assembly has been very clear and efficient in this field. There has been little doubt as to who was the subject of Resolution 1514 (XI), the "Granting of Independence to Colonial Countries and Peoples", and Resolution 1803 (XVII), the "Right of Peoples and Nations to permanent Sovereignty over natural resources".

In our view, the only factor that separates colonized peoples from indigenous peoples is the fact that the colonial power is external in relation to the territory in question. In the case of indigenous peoples, colonial powers have been so efficient in subduing the original inhabitants that they were able to establish themselves as state or nation, and thus reduce the once "colonized peoples" to powerless "minority groups", even though in some states the indigenous population still constitutes the majority, e.g. Guatemala. Suddenly, the problem became internal and this way almost untouchable in international law. So today, and since the beginning of the United Nations, the efficiency of the colonial powers in subduing the indigenous peoples and the speed in which they succeeded in establishing themselves as independent states has actually been rewarded in the international United Nations forum, as well as in international law in general, to the detriment of indigenous peoples.

The effect of this classification of indigenous peoples also led to the exclusion from the right to self-determination as this right was only accorded to "peoples". The term "peoples" is not clearly defined. In a study from 1981, Special Rapporteur Cristescu opens up the possibility that self-determination can also apply internally, insofar as a group of people in a state can be defined as "peoples". He indicates that the question is still not settled and proceeds, "The fact is that whenever in the course of history a people has been aware of being a people, all definitions have proved super-

fluous" (E/CN 4/Sub 2/404/Rev.1/p.40). Our contribution to this question is to reassert that we are aware that we are peoples, and any further attempt to define this term should include our characteristics. We state that the fact that the colonization of today's indigenous peoples happened with such speed and efficiency, enabling the colonial powers to establish themselves as a state, should constitute a better reason for granting us the right to self-determination than the opposite.

As for today's work on indigenous peoples, we have the following points to make:

As far as we are concerned, the appointment of Special Rapporteur, Mr. Jose R. Martinez Cobo did not constitute any major breakthrough for indigenous peoples since the Rapporteur continued to work within the framework of minorities, upholding the integrationist attitude of the Commission. The study was basically aimed at examining to what extent indigenous populations have been discriminated against and which special measures that have been taken to make up for their disadvantaged position in society. Mr. A. Willemsen-Diaz, participating in a Comparative Law Panel during the 1974 session of the American Society for International Law Conference, stated that the study "is to be a global study covering all kinds of discrimination" and to examine the "special measures taken to place them on an equal footing with other persons or groups in the real and effective enjoyment of such rights and freedoms, over and above any formal equality they may have received already." There is little sense in recognizing the freedoms of individuals if the community in which the individuals live is not free. The closest Cobo got to the issue of self-determination was to investigate discrimination in the matter of political rights and special measures taken by states to make up for existing disadvantages, particularly in terms of local autonomy (E/CN 4/Sub 2/L 566/p.16, para.75). The study was framed to reinforce the principle that the rights of individuals belonging to minorities to participate in the government of the territory should be respected as an internal matter of the state concerned. The information that Cobo gathered on the issue of indigenous peoples' self-government was reported by him as being "incomplete and fragmentary, and in most cases no information was available from countries surveyed" (E/CN/Sub 2/1983/21/Add 6/p.54, para. 186-87). Because of this grave deficiency in the Cobo Report, the 1981 NGO Conference on Indigenous Peoples and the Land called for a Special Rapporteur on self-determination (Ibid, p.41, para. 152). This recommendation was eventually concurred and supported by Cobo in 1983 (E/CN 4/Sub 2/ 1983/21/Add 8/p.74, para. 583). Apart from the fact that the Cobo Report is based on information stemming mostly from governments, and apart from the fact that only governments, not NGOs, had a chance to feed-back on the summaries and influence the report, we maintain that even though the objective of the report might have seemed logical 14 years ago, it has now been overtaken by developments and events within the indigenous peoples themselves. Today's issue is not to what extent we are being discriminated against as our rights as individuals are already protected by international law, but to what extent we are entitled to self-determination as peoples. In the 14 years indigenous peoples have risen, organized ourselves and voiced our concerns in various declarations. The issue today is to establish collective rights.

1. We urge that the work on indigenous peoples be dealt with in a different UN body as stated by the Working Group member on the First Session, either by establishing a new one or by referring the matter to the Committee of 24.
2. We request that a new UN Conference be held, preceded by an NGO Conference in order for the indigenous peoples to develop the standards we want.
3. Indigenous peoples' declarations and statements must henceforth guide the direction of international work on indigenous peoples. We appreciate the time-consuming and diligent efforts of the Rapporteur, but we must reject the Cobo Report as the authoritative basis of future work on the rights and freedoms of indigenous peoples. We request a new study on the premises that we should be entitled to self-determination as peoples, as Cobo himself recommended. In the proposed study, information must be obtained directly from the people concerned as is the principle of this Working Group.
4. We request that the Working Group ask the Sub-Commission to recommend that the Commission on Human Rights affirm the inalienable right of indigenous peoples to self-determination at its next meeting.
5. Finally, we urge that these requests and recommendations be communicated to the Human Rights Commission.