

INDIGENOUS PEOPLES' PROPOSED AMENDMENTS RELATING TO THE RIGHT OF SELF-DETERMINATION

(Preambular para. 15, new preambular para. and Art. 3)

SEPTEMBER 20, 2004

Preambular Paragraph 15 *Bearing in mind* that nothing in this Declaration may be used to deny any peoples their right of self-determination, exercised in accordance with principles of international law, including the principles contained in this Declaration.

[Referred to as the "AILA/Guatemala" proposal made at the WGDD, Ninth Session, September 2003]

New Preambular Paragraph *Encouraging* harmonious and cooperative relations between States and indigenous peoples based on principles of justice, democracy, respect for human rights, non-discrimination and good faith.

[Proposal made by an overwhelming majority of Indigenous peoples at the WGDD, Tenth Session, September 2004]

Article 3 Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

[Original text as adopted by the Sub-Commission, 1994]

NOTE: The above amendments are to be read together. They are being made in order to achieve an acceptable alternative to the amendments to Art. 3 suggested by the authors of CRP1. An essential purpose is to preserve the original language of Art. 3 of the Sub-Commission text. The present proposal requires deletion of the two paragraphs added to Art. 3 in CRP1.

Submitted by:

African Indigenous Peoples Caucus
Arctic Indigenous Peoples Caucus
Asian Indigenous Peoples Caucus
Latin American Indigenous Peoples Caucus
Pacific Indigenous Peoples Caucus
American Indian Law Alliance
Assembly of First Nations
Congress of Aboriginal Peoples
Grand Council of the Crees (Eeyou Istchee)
Innu Council of Nitassinan
Native Women's Association of Canada
RAIPON (Russian Federation)

INDIGENOUS PEOPLES' PROPOSED AMENDMENTS RELATING TO THE RIGHT OF SELF-DETERMINATION

(Preambular para. 15, new preambular para. and Art. 3)

September 20, 2004

EXPLANATORY NOTE

This Note explains further the spirit and intent of the proposed amendments to the Sub-Commission text of the draft *U.N. Declaration on the Rights of Indigenous Peoples*. These amendments were submitted by an overwhelming majority of Indigenous Peoples participating at the 10th session of the WGDD. The **purposes** of these amendments, which are to be read together, include:

- to achieve consensus among States and Indigenous peoples, by accommodating both State and Indigenous concerns in regard to the fundamental human right of self-determination
- to retain the original language of Article 3, as provided in the Sub-Commission text, consistent with principles of equality and non-discrimination
- to affirm that, to the extent provided in international law, States will continue to have the freedom to invoke any principle of international law, including the principle of territorial integrity, in relation to the exercise of the right of self-determination
- to avoid any explicit reference to the principle of territorial integrity in the draft *U.N. Declaration*, in view of the growing abuses of this principle in different regions of the world
- to encourage harmonious and cooperative relations between States and Indigenous peoples, based on universal and mutually reinforcing principles and values of international law.

As proposed in **PP15**, the right of self-determination of Indigenous peoples would be exercised “in accordance with principles of international law...” In any given circumstance, States could freely invoke any principle of international law, including territorial integrity, to the full extent permitted under international law. This unequivocally addresses a key concern of many States.

As indicated in the *Charter of the United Nations*, the 1970 *Declaration Concerning Friendly Relations* and other international instruments, “territorial integrity” is one of the existing principles of international law. Article 45 of the Sub-Commission text gives even further assurance to States that they would retain their existing capacity to invoke territorial integrity, by explicitly providing:

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations.

In regard to the **new preambular paragraph**, it provides a further positive dynamic by encouraging harmonious and cooperative relations between Indigenous peoples and States in a manner that strengthens the international human rights system as a whole. This provision would foster dialogue, mutual understanding and constructive arrangements, without imposing any unjust or excessive pre-conditions to the exercise of the right of self-determination.