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UN Declaration on the Rights of Indigenous Peoples

Press Statement by the Indigenous Peoples' Caucus

Presented by Les Malezer, Chairperson of the Indigenous Peoples' Caucus

Introduction

I open this statement with the acknowledgement of the First Peoples of this region and, as such pay our respects to them, their ancestors and their lands and territories. As a traveller to this region I seek their permission to be here, with my claim to be here to work for the rights of all First Peoples, known as the Indigenous Peoples, of the world.

As the United Nations Headquarters is deemed to be international territory, I also acknowledge and pay my respects to all Indigenous Peoples of the world and reaffirm my commitment to be here as their servant and messenger.

I introduce myself as Les Malezer, Chairperson of the Global Indigenous Peoples' Caucus, represented at the United Nations for the purpose of the adoption of the Declaration on the Rights of Indigenous Peoples.

I am a traveller from Australia, a descendent of the Gubbi Gubbi and Butchulla peoples of the region of the Mary River and Fraser Island on the sub-tropical eastern coast of the continent. I am the Chairperson of the Foundation for Aboriginal and Islander Research Action (FAIRA), and indigenous rights organisation duly accredited in Australia, in the Commonwealth and the United Nations. In my journey to here I have also a mandate from the collective Indigenous Peoples Organisations of Australia and the Pacific Indigenous Caucus, to represent their interests to the United Nations.

Ladies and Gentlemen of the Press, I take the podium today to make the announcement that the United Declaration on the Rights of Indigenous Peoples is due to be formally adopted by the United Nations General Assembly within the next eight weeks. This is now a period of significance for 350 million Indigenous Peoples around the world.

The United Nations General Assembly decided, by its discretion, to delay its formal adoption of the Declaration when given the opportunity eight months ago, but it did make that decision with the commitment that it will complete the task before the end of the 61st session of the General Assembly. The time has come.

Indigenous Peoples demand UN accountability

This is not the first time that representatives of the Indigenous Peoples have come to the international governing body to be heard. That first happened in 1923. Unfortunately the representative, Deskaheh, was turned away from the League of Nations, refused the opportunity to

address the world body. This is not the first time the agenda and business of the Indigenous Peoples has been addressed by the United Nations.

UN has responded positively

Attention to the Indigenous Peoples has occurred regularly and diligently for the past 25 years as the United Nations in many different forums have considered our issues and responded accordingly. We even have our own 'Permanent Forum on Indigenous Issues' which consists of indigenous persons selected by our own populations and which reports directly to the Economic and Social Council.

However the adoption of the Declaration on the Rights of Indigenous Peoples is the first major occasion on which the representatives of the Indigenous Peoples of the World have come to conduct business directly with the General Assembly.

Of course we are restrained and restricted by the rules and procedures of the United Nations, but that is not our problem, that is the challenge of the United Nations. We have been pleased, for the most part, in the way we have been welcomed into the halls of the UNGA and the way most governments have respected our credentials to participate while the Declaration, perhaps 'our Declaration' if we take this document to be the collective effort of states and indigenous peoples alike, is being considered.

However there have been negative experiences here also over this past year. Some of those I will elaborate later in this statement. We would like to be acknowledged properly by the General Assembly when the UNGA resolution is presented for final adoption. This is not difficult. It is quite within the capacity of the UNGA, for example, to allow the indigenous members of the Permanent Forum to be present on the floor of the General Assembly. But that is only one small example.

UNGA has been inconsistent in exercising its responsibility

Our concern is more related to the myth that discussion of issues at the General Assembly is for states only and that Indigenous Peoples delegations are merely 'non-government organisations'. This is not true. In many instances our delegations are legitimate political leaders of their peoples. Many delegations are not truly represented by the states which act without regard to the peoples to control their lives, rule over their territories and exploit their resources for alien benefit. While the integrity of the states must be kept, and the integrity of the United Nations is vital to the role of the organisation there is adequate argument for the UNGA to admit that Indigenous Peoples have a right to be heard at the General Assembly level.

Therefore it is disappointing to have been told on a number of occasions, commencing with the session of the Third Committee late last year, that we do not have a right to conduct business with states at the General Assembly level. Not all states, far from it in fact, have taken this view but it is a view expressed in any event and a view which we are prepared to challenge, in our interests – IN OUR INTERESTS.

Just two weeks ago the Indigenous Peoples representatives were prevented from participating in an informal intersessional meeting about the Declaration. While the Chairperson of the meeting, the person who convened and controlled the business and purpose of the meeting, was satisfied to include our representatives, a small group of states led by Russia objected to our presence and forced us to leave the room. Yet once we had left the room this group of seven states each took the floor and tried to argue that the Declaration on the Rights of Indigenous Peoples must be changed to

take away our rights to the following areas: self-determination, self-government, indigenous institutions, 'Lands, Territories and Resources', redress and restitution, free prior and informed consent, definition of "Indigenous peoples, militarization, Intellectual Property and education.

Setting aside our disquiet over these states' efforts to re-write the Declaration in the General Assembly, we are dismayed by any suggestion of a UN culture that entertains such significant and one-sided changes to a vital document that has navigated twenty five years of expert and rigorous discussion.

In this statement we go on to provide evidence of how the interests of the United Nations itself has been betrayed by some states who refuse to be held accountable to their performance and their actions in relation to Indigenous Peoples. Most relevant is the concern over accountability of the UN General Assembly to all those persons, peoples and institutions – and a number of those persons have literally given their lives to this work – over the past twenty five years to develop an acceptable Declaration on the Rights of Indigenous Peoples.

We are appalled, for example, by the utter disrespect shown to the Working Group on the Declaration and the Chairperson of the Working Group, for the efforts made to comply with the General Assembly resolutions 59/174 and 60/172. These resolutions were passed unanimously, or at least by consensus, by the General Assembly yet some states can freely tout in the General Assembly, behind their protective barriers, about not understanding the importance of the Declaration and about not having enough opportunity to participate.

The seven states, by the way, who now want to restart the drafting of the Declaration are Canada, Australia, New Zealand, Russia, Suriname, Guyana and Colombia. We would like to see the human rights records of these states, in relation the treatment of indigenous peoples – and in particular the most recent reports of the human rights treaty bodies – to be taken into account in conjunction with their views on the Declaration.

Why shouldn't the human rights records of states be held equally accountable in the General Assembly as they are in the Human Rights Council? Why should the most blatant and long-term violators of indigenous rights be able to participate in vital discussions and the vote on the rights of indigenous peoples.

United Nations is established to represent the peoples of the world

We all know the United Nations Charter begins with the words 'We, the peoples of the world'. The will of the peoples and the collective interests of the peoples are represented at the United Nations by the governments of the nation states. Many governments are less than seventy years old. While states may collectively represent and exercise the economic and military power of the world they do not necessarily represent the collective wisdom of the world and, as the climate crisis shows, might sometimes place the peoples of the world in grave danger.

Indigenous Peoples demand to be heard in our own right

The Indigenous Peoples of the world are distinctive as populations. We do not fit the description as ethnic groups, religious groups, political sects, landowners, governments, legislatures, minorities or the impoverished, although we may be all of these. We are distinct peoples by every definition of the term. We are the people who were colonised after Columbus found his way to the Americas and the European merchants and European rulers conspired to dominate and exploit the rest of the world. We are the people the United Nations overlooked when it set an agenda to de-colonise the world. We are peoples, we have our own societies and laws, we have our own languages, we have

our own lands and territories, we have a unique relationship with the natural world that can only be achieved through eternal bonding, and we have a ceaseless will to survive as indigenous peoples.

Procedure must be concluded

The gestation and development of the Declaration on the Rights of Indigenous Peoples has been a long and arduous process. Here is some of the timeline as seen by our indigenous delegations.

- Indigenous Peoples independently rallied at the global level for recognition after World War II, particularly by the 1980s;
- The United Nations acknowledged and responded to Indigenous Peoples demand for recognition in 1982 – WGIP created
- In 1984 work commenced on the drafting of a human rights standard for Indigenous Peoples
- The United Nations declared 1993 the International Year of the World's Indigenous People
- The United Nations declared the International Decade of the World's Indigenous People (1995-2004)
- The United Nations established the Permanent Forum on Indigenous Issues in 2002
- The United Nations declared the Second International Decade of the World's Indigenous Peoples (2005-2014)

African concern is valid

We are aware that the African group is concerned that tribal groups in Africa might misuse the Declaration to falsely declare themselves as 'indigenous peoples' and misuse the right of self-determination to claim a right of secession. Even in less extreme cases various entities might use the right to self-government and institutions to create instability and opposition to governments and social unity. We remain sensitive to these concerns and understand that these situations are highly undesirable.

African amendments are not sustainable

However we believe that fear of misinterpretation and misuse of the Declaration is not a basis for denying equality and rights to indigenous peoples. We consider that governments must face their responsibility to create awareness and understanding about human rights rather than deny human rights. We believe that recognition, respect and promotion of human rights leads to increased national stability and peace, not the other way around. This is the experience around the world.

The African Group of States has presented an amended version of the Declaration which contains over thirty amendments to the text of the Declaration. The Indigenous Peoples' Caucus has produced an objective critique on this African proposal that explains each of these proposed amendments is not only unacceptable to indigenous peoples but inconsistent with the fundamental principles and standards of the United Nations. For example, the collective right of self-determination for indigenous peoples would be eliminated and substituted by the lesser civil right of every indigenous person to participate in national government; many rights of indigenous peoples will not be universal but made vulnerable and subject to the laws of the state in which they live; and the state will have the capacity to deny the identity of indigenous peoples, thus denying to them all the important rights contained in the Declaration. This proposal by the African Group of States cannot be seriously entertained, nor can it form the basis of negotiations for resolution of differences. We made this clear to the Facilitator during his hearings.

The Indigenous Peoples' Caucus is extremely disappointed that the African Group of States has not sought to engage in any discussions with the Indigenous Peoples on their proposal. Our

delegations, including two separate delegations from Africa, one of indigenous peoples representatives and one of African human rights experts, have made every effort to engage with the Missions to the UN in New York. Through persistence we were successful in meeting many states' representatives in New York, including African representatives but we were not successful in achieving engagement with the African group itself.

In this regard the African call for unity of its member states, to oppose the Declaration regardless of its merit, regardless of its consequence and regardless of the conviction of the state, is a disservice to the transparency and accountability of the United Nations. Moreover it is an offence to all peoples of the world, a brutal reminder that discrimination against the indigenous peoples is entrenched in modern geo-politics, and a cover up of the extreme predicaments that demanded the gestation of an indigenous declaration twenty five years ago and a renewed commitment every year since.

African solution is accessible

Noting that the African Commission for Peoples and Human Rights supports the adoption of the Declaration we have asked the African states to look to develop a regional solution in the framework of the African Charter and African Commission. Ultimately this framework could enable the identity of indigenous peoples to be duly acknowledged and ensure that governments and indigenous peoples are able to find the spirit of partnership and establish true cooperation as already extensively promoted by the United Nations, most recently in the Programme of Action for the Second Decade of the World's Indigenous Peoples.

Tenuous opposition to the Declaration continues

The appointment of a Facilitator by the President of the General Assembly a few weeks ago has been welcomed and supported by the Indigenous Peoples' Caucus. The Caucus has made every effort to support the work of the facilitator and to encourage an objective effort to widen support for the Declaration, based upon fairness and reason.

Unfortunately the Facilitator has not succeeded in establishing a consensus of states, despite a number of states proposing their support for the declaration and claiming to be able to build a consensus with the opportunity of a small delay in the adoption of the declaration.

We hope that the Facilitator's report will put to rest the myth of consensus offered by states hostile to the declaration. As observers over the past few weeks the Caucus could not detect a genuine effort by Canada and its six allied states – Russia, Australia, New Zealand, Colombia, Guyana, Suriname – to reach a consensus with the majority of states. On the contrary all we could identify was a deliberate attempt to delay the adoption of the declaration through groundless calls for procedural delays and formless discussion on thematic concepts. The Caucus remains certain that these states will continue, by constantly changing their requests for attention, to find ways to frustrate the completion of this agenda.

UN must unveil indigenous standard

The Declaration on the Rights of Indigenous Peoples has already been adopted by the Human Rights Council.

It is now time for the General Assembly to adopt this same declaration, by vote if necessary.

The Indigenous Peoples' Caucus call upon all states to support the Declaration because the Declaration has withstood the UN tests for the development of a human rights standard. It is an instrument that complies with international law and equates the rights of Indigenous Peoples with the rights of all other Peoples. The Indigenous Peoples' Caucus condemns the efforts by any states to unfairly influence or intimidate the votes of smaller states and developing states in exchange for aid, development assistance or other financial or political advantage.

The Indigenous Peoples' Caucus calls upon those states without indigenous peoples to vote in support of the Declaration, even if the only reason or criterion is to protect and ensure the integrity of the Human Rights Council.

It is now time for the United Nations to represent and guarantee the rights of all peoples, including Indigenous Peoples. We call upon the United Nations General Assembly, in good faith with its resolution of December, to convene as soon as possible to vote in favour of the Declaration on the Rights of Indigenous Peoples.