

# American Indian Law Alliance

## on the Declaration on the Rights of Indigenous Peoples

On June 29, 2006, the Human Rights Council adopted the Declaration on the Rights of Indigenous Peoples.

We pray that this truly represents a new beginning in our fight for the equal and full participation of Indigenous nations, peoples and organizations in the world arena.

Most especially, we pray that it is a useful tool for all of our peoples around the world fighting so arduously on our territories in order to preserve our cultures, the environment and a meaningful legacy for the generations to come.

We also pray that all of the leaders and elders who have gone to the Spirit World and led us in this fight are smiling favorably on this success.

Finally, we congratulate those that worked so hard and successfully in achieving this meaningful step and especially acknowledge the hard work of so many of our non-Indigenous allies.

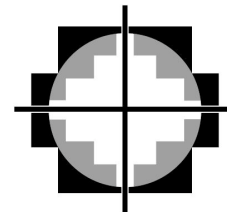
Now, friends, the real work begins....

*the* AMERICAN INDIAN  
LAW ALLIANCE

The following is the intervention of the American Indian Law Alliance that clarifies our understanding of the articles on self-determination.

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## AMERICAN INDIAN LAW ALLIANCE

NGO in Special Consultative Status with the Economic and Social Council of the United Nations

June 20, 2006

H.E. Ambassador Luís Alfonso de Alba, and

Their excellencies the representatives of states-members

The Human Rights Council

Palais des Nations

Geneva

Dear Ambassador de Alba and esteemed members of the Human Rights Council,

On behalf of the indigenous communities that we serve, the American Indian Law Alliance extends its congratulations to you for the confidence that the General Assembly has shown in your respective states in entrusting their representatives in Geneva with the primary responsibility of protecting and promoting the world's human rights agenda. We wish you every success in your endeavors and, to this end, invoke the legacy of humanity's wisest and most courageous forebears to guide your work.

As an NGO in consultative status with ECOSOC, and an active participant in the arduous decades-long process during which the Draft Declaration on the Rights of Indigenous Peoples (DD) was negotiated, we also write to recommend to the Council two actions regarding the DD which, as you must know, represents for our peoples the single most important international initiative to date for the protection and promotion of Indigenous rights.

The first action we recommend is that the Council immediately adopt, i.e. in its first session, the chair's text of the DD (Chair's Text) which was submitted to it by the Commission on Human Rights. While the Chair's Text fails to meet indigenous peoples' concerns in significant respects (it ignores our call, for example, for the demilitarization of our lands), the document nevertheless stands today as a progressive statement of the human rights of indigenous peoples that states should have long ago respected, protected, and promoted. We consequently believe that the Council should reject calls for the revision of the Chair's Text, either by the Council itself or a subsidiary body, and concentrate instead on recommending the Chair's Text to the forthcoming session of the General Assembly for adoption as a template on which to build a new and much-needed indigenous/state partnership. Given the General Assembly's 2004 promulgation of the second Decade of the World's Indigenous Peoples, and the 2005 World Summit Report's call for the early adoption of a Declaration of the Rights of Indigenous Peoples, the Council, we respectfully submit, can hardly do less.

The second action that we propose, which we hope you will not construe as inconsistent with the first action, is a limited rectification (a concept we borrow from Chinese jurisprudence) of the language used in two articles in the Chair's Text in order to remove an inaccuracy in one, and to conform the terminology used in the other with prevailing UN practice. The rectification we propose is as follows (additions in **bold** and deletions in [brackets]):

a.

Article A3bis: "Indigenous peoples, in exercising their right to self-determination, have the right, **inter alia**, to [autonomy or] self-government in matters relating to their internal and local affairs, as well as ways and means for financing its [their autonomous] functions."

Explanation: First, indigenous peoples' right to self-determination already encompasses more than the "internal and local". We now represent our interests, for example, in the Permanent Forum, the OAS, and other international fora. Second, "autonomy", a term used in some domestic legal systems, means different things in different states. A UN human rights Declaration should rely solely on the less problematic term "self-government" which is used in the Charter and other international documents.

b.

Article 45: "Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations.

In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law, in accordance with international human rights [obligations] **standards**. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and compelling requirements of a democratic society **governed in accordance with international standards of good governance.**"

Explanation: First, as with other human rights instruments, the Declaration (and certainly the Council) should hold out progressive standards and not stop at existing obligations. Indeed, the Declaration's preambular paragraph 15 requires indigenous peoples to exercise their self-determination in conformity with international law in general, and not only incurred obligations. Second, limitations that are placed on the rights of indigenous peoples should comply with, not only international human rights standards, but also those pertaining to good governance which the UN is now actively promoting.

Finally, we wish to emphasize that we see our two recommendations as mutually consistent insofar as we seek a *rectification* and not a revision of the Chair's Text. Should you conclude otherwise, however, we wish to make it very clear that we categorically disassociate ourselves from any attempt to use the proposed rectification to postpone the Council's adoption of the Chair's Text.

**As the United Nations itself has recognized, there is an immediate need for us all to jointly launch a new indigenous/state relationship based on respect and justice. The Chair's Text provides an adequate template for this necessarily evolutionary partnership to begin. With time, its best and worst practices will emerge to guide us in solidifying the partnership. While the American Indian Law Alliance considers it crucial to register for the record our constituents' understanding of articles 3bis and 45 in the Chair's Text, we are also prepared to begin the new partnership based on the sum of the different parties' good faith understandings of the document.**

We request that you kindly make this communication a part of the official records of the communications that the Council has received regarding the Chair's Text.

Respectfully,

American Indian Law Alliance