

SPECIAL MEETING OF THE WORKING GROUP TO
PREPARE THE PROPOSED AMERICAN DECLARATION
ON THE RIGHTS OF INDIGENOUS PEOPLES

Hall of the Americas
March 11 – 15, 2002
Washington, D.C.

OEA/Ser.K/XVI
GT/DADIN-77/02
28 March 2002
Original: English

COMMENTS OF THE UNITED STATES DELEGATION

(Presented on March 28, 2002)

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ARTICLE IX Education

The United States views education as a vital issue for the cultural survival of Indigenous Peoples. Indeed, it is the cornerstone for self-determination of tribes in the United States. The legislation on education was the first legislation in the United States to recognize that self-determination is really about control of your destiny and to move these issues to local control.

In general, we are concerned that there is overlap and duplication between the paragraphs and recommend that we clearly establish what the concepts and objectives are in each one. It is our understanding that there are five concepts:

In paragraph 1, the concept is that Indigenous Peoples have the authority to a) establish and operate educational programs; b) prepare and apply educational plans and curricula; and c) train and accredit teachers and administrators. The concept is similar in all of the proposals on the first paragraph, although there are some variations in language. We believe it is essential that we include here the concept that such programs must meet applicable minimum requirements in the field of education, in accordance with domestic laws and practices. We prefer the proposed U.S. formulation of this paragraph. Sentence 2 of the Chair's text should not be dealt with in this paragraph.

In paragraph 2, the concept is that Indigenous Peoples should have the opportunity to learn native indigenous languages and receive instruction in that language. We note that the actual U.S. proposal on this concept is mistakenly numbered paragraph 3 and that our proposal for paragraph 3 is mistakenly numbered paragraph 2. The position of these proposals should be reversed. Mr. Chairman, my delegation believes that cultural identity and language are vital to the survival of Indigenous Peoples. It is important to note that this instruction in indigenous languages is only practical when provided within the educational institutions as described in paragraph 1. As was stated by several delegates in the previous discussion on language in Article VII, it is simply not practical to establish a national norm of language. Instead, governments should allow the choice of the Indigenous Peoples to provide an alternative learning experience in the indigenous language.

In paragraph 3, the concept is the principle of equality—in access to education and in quality of education. We note again that the U.S. proposal that deals with this concept is mistakenly listed as paragraph 2. The Chair's paragraph includes a concept that we believe belongs in paragraph 4.

In paragraph 4, the concept is the pluricultural nature of societies as previously stated in columns 1 and 2. We agree that State-funded education should respect the cultures of Indigenous Peoples, but we have difficulty with the call to countries to include certain items in their educational curriculum because the U.S. educational curriculum is determined at the local, not the federal, level.

In paragraph 5, the concept is resources and assistance. We maintain our original proposal from 1999 on this paragraph. This refers only to the principle of equality in access to education and in quality of education. U.S. law is very clear that we cannot prescribe one approach when providing federal funding. Because there is a right to education, U.S. law provides funds to ensure equal

access of all citizens to education, including funding of appropriate language training to enable them to benefit from the national education system. In federally funded programs, we try to accommodate non-English-speaking students through a variety of programs, including English as a Second Language (ESL), immersion, or bilingual education. In point of fact, the federal government has negotiated agreements with Indigenous Peoples in the United States to provide federal assistance and funding to tribes to operate their own educational systems as proposed in paragraph 1. This is done pursuant to the Indian Self-Determination and Education Assistance Act in the United States

ARTICLE X Spiritual and Religious Freedom

The United States respects that Indigenous Peoples have long-standing traditional religions, rites and ceremonies.

Under the U.S. Constitution, the right of all individuals to freedom of thought, conscience and religion is protected. For American Indians, Eskimos, Aleuts, and native Hawaiians, the American Indian Religious Freedom Act provides that it is the policy of the United States to protect and preserve their inherent right of freedom to believe, express and exercise their traditional religions and the freedom to worship. Nonetheless, the United States wishes to maintain the positions that were reflected under Article X, paragraphs 1 and 2, but combine these in one paragraph as alternative text to the Chair's text for paragraph 1. At this stage, we wish to note that we remain concerned about expanding the scope of a human right -- the right of an individual to freedom of thought, conscience, and religion -- with a right that flows to Indigenous Peoples in our country, by virtue of their political relationship with the United States. We continue to reflect on this issue.

As to Article X, paragraph 2, we offer the following language, which tracks the language of the International Covenant on Civil and Political Rights:

“Indigenous individuals shall not be subject to coercion which would impair their freedom to have or to adopt a religion or belief of their choice.”

ARTICLE XI Family Relations and Family Ties

Yesterday, we mentioned the key link between education and self-determination codified by “the” federal statute through which tribes obtain most of the resources to conduct education. That is *The Indian Self-Determination and Education Act*.

The primary focus of education is on the child, but U.S. law, policies and programs also include the family. There are programs for parenthood training to aid early childhood education, and to help make the home environment conducive to learning. Overall, the goal is to have U.S./tribal partnerships between schools, parents, business/industry and social service agencies.

Regarding the welfare of Indian children, U.S. policy is to protect the best interests of Indian

children and to promote the stability and security of Indian tribes and families. The U.S. does this by establishing minimum Federal standards for the placement of Indian children in foster or adoptive homes, which reflect the unique values of Indian culture, and by providing assistance to Indian tribes to operate their child and family services programs.

Based on these domestic experiences, we would like to offer alternative text to the Chair's proposal for Article IX, paragraph 2, which would read:

“Consistent with international humans rights law, states should strive to establish minimum standards on foster care and adoption which reflect the unique values of indigenous culture, as well as strive to establish child and family-focused programs.”

We will provide the secretary with a copy of this proposed text.

Thank you, Mr. Chairman.

Clarification:

We would like to clarify that our earlier statement was intended to address the sensitive question of State policy on the protection of children. What may not have been clear was that in the U.S., tribes play a major role in the foster and adoption processes, through tribal courts as well as through tribally operated social service program. Also, while removal is what physically happens and placement is usually with the extended family, we could also say “establish minimum standards on foster care and adoption which reflect the unique values of indigenous culture, as well as establish child and family-focused programs.” We need to reflect further on how to formulate the indigenous community's role in this process.

ARTICLE XIII Environmental Protection

We view this article as critical to the Declaration, and believe four important themes should be expressed within it.

First, the article should make clear that indigenous peoples are entitled to equal protection with respect to the application of environmental laws to indigenous peoples, and indigenous lands and other lands within a State.

Second, we believe it crucial for States to promote the active and informed participation of indigenous peoples in the environmental issues and decisions that directly affect them.

Third, this Article should aim to ensure parity between indigenous and non-indigenous peoples in the accessing environmental information that directly affects indigenous peoples and indigenous lands.

Fourth, we affirmatively support the environmental management of indigenous lands, by indigenous people, in ways that promote self-determination.

In our view, the focus of this section should be on environmental protection, and not on the right per se. We believe this article should be entitled simply “environmental protection,” as this concept more broadly addresses the four themes just described.

Here, in the United States, we work with over 570 federally recognized tribes on a sovereign-to-sovereign basis, to promote and advance environmental protection on their lands. In particular, we recognize Tribes as the most appropriate parties to set environmental standards, and manage environmental programs, on their reservation lands. We provide substantial financial and technical support to help tribes build the capacity to do so. We also recognize that we have a trust responsibility to protect the natural resources of tribal lands.

Under some of our environmental acts such as the Clean Air Act, Clean Water Act, and Safe Drinking Water Act, many federally recognized tribes have the opportunity to manage directly, environmental programs protecting their air, lands and water. Through such programs, tribes can set their own standards – even standards more stringent than adjoining state or national standards – and implement environmental programs in a manner that promotes tribal self-determination and tribal sovereignty. For example, 20 tribes set water quality standards, and manage the quality of reservation waters. Currently, 26 more tribes are actively seeking to do so.

On the matter of informed participation and meaningful dialogue with Tribes on environmental matters, let me share with you just one example of the efforts we have undertaken. Seven years ago, the Environmental Protection Agency established a committee called the tribal Operations Committee. It is composed of elected tribal leaders and senior officials of the Agency, including the EPA Administrator. The Tribal Operation Committee meets face-to-face four times a year, and has conference calls once a month. In this way, tribal leaders are informed of agency actions. They can consult meaningfully with senior officials, and sometimes participate directly on environmental policies, actions and laws that directly impact them. We believe this committee and this process is respectful of tribal sovereignty, and is consistent with our trust responsibility to tribes, and to our government-to-government relationship with each federally recognized tribal government.

The Environmental Protection Agency is not the only federal agency undertaking such efforts to promote better relations with indigenous peoples. In just 30 years, the United States and the Tribes have made significant strides to work as partners, in the promotion and advancement of environmental protection for indigenous peoples and indigenous lands. The United States, and with representatives of the indigenous peoples, on strategies all of us have undertaken to promote the three themes just described.

ARTICLE XVIII Lands and Territories

We would like to speak briefly about what we think is fundamental in addressing the subject of lands and territories.

Indigenous land ownership needs to be addressed in a solemn, formal process among each state and indigenous community.

The process must begin with trust and a sense of security. Each state must feel secure in its

existence as a nation-state and with its domestic communities. Indigenous communities should begin with the feeling of security among the parties; trust will follow. Land ownership and the basics of jurisdiction can then be discussed.

Trust is a critical base upon which to begin dialogue. Both indigenous peoples and the states must be able to trust that they will be dealt with openly and fairly, and that the needs of each will be met. We hope that this session will help to advance trust and understanding. We also hope to continue with domestic consultations and inter-agency review to develop language that is more reflective of the needs of indigenous peoples with respect to their lands and territories, while addressing the concerns of the State.

In the modern United States, we now put a lot of faith in national strength coming from regional advancement. Many tribal governments have played an integral role in both local and national politics. A number are also leaders in their regional economies and the United States is stronger for this. Historically, our former processes were not truly fair and our early national strength was built upon exploitation rather than upon partnerships with tribes. So today, we are trying to establish trusting, fair and respectful relationships with tribes in the United States, especially including discussions about lands and territories. We encourage you to learn from our past mistakes, as well as from our modern successes.

Very quickly, we would like to highlight several important items in U.S. law and policy regarding indigenous lands:

- United States consultation is a requirement.
- Tribal land cannot be sold without the consent of the owner-tribe.
- Lands held in federal trust for tribes and individuals are not taxed.
- Tribes have jurisdiction over lands, and this jurisdiction is particularly broad when tribes own most of the lands within the boundaries of the reservation areas.
- Many tribes with treaties have reserved the rights to fish, hunt and gather in off-reservation territories, and the United States acknowledges a solemn legal and moral obligation to protect these rights.
- Generally speaking with regard to subsurface rights, tribes and individuals have full subsurface rights to their lands; and,
- With regard to sacred sites, the U.S. is beginning to work with tribes to accommodate access to sacred sites located on public lands in recognition of the importance of such lands to the continuation of indigenous culture – indeed this is the subject of a forum being conducted next week in partnership with the National Congress of American Indians, the Association on American Indian Affairs, the Seventh Generation Fund, the Native American Rights Fund, and the newly formed Sacred Land Protection Coalition.

In conclusion, we acknowledge that our national trust responsibility is to protect tribal lands for the full use and benefit of each tribe.

Mr. Chairman, my delegation has chosen not to make specific proposals on any of the texts in this section because we will be beginning shortly an interagency review of the U.S. Government position. We thank everyone for their comments here today, which we will take back for consideration during our interagency review.

SECTION FIVE
(General Comments)

Thank you, Mr. Chairman. My name is James Sappier, a Delegate of the United States and former Chief of the Penobscot Nation. Culturally and traditionally, I am a Penobscot Indian, and, as such, I thank the Mohawk delegate for Invocation, the opening prayer, which was for all of us, and “All Our Relations.”

The prayer is a customary and traditional practice of all our tribes, and this convocation of the Indigenous Peoples with the State qualifies as a traditional meeting--a gathering. We, all of us, are now one throughout these five days.

Thank you, Representatives of Indigenous Peoples who have traveled so far to assist us in developing a meaningful Declaration, very much needed by our Peoples and the States.

Mr. Chairman, Member Delegates, the United States has a special relationship with the 565 Indian Tribes who speak 17 languages and over 270 dialects. That relationship is respectful of our roles as tribal governments--well established before the time of the coming of Europeans to the indefinite future.

We must keep in mind that each tribe has its own creation story.

That special political relationship exists in large measure because the United States continues to recognize the needs of all citizens to coexist with the expressed designation of indigenous lands and territories protected by the United States for the use and benefit of American Indians and Alaskan Natives.

I became immersed in Indian Affairs over 30 years ago at the start of the self-determination era, and have seen many positive changes over this time span. It really did begin with education. As we have stated, the legislation on self-determination and education was the first step in self-determination and controlling our tribal destiny. It moved the issue to local control. Tribes who had nothing slowly began to assume control over their well-being.

In the 1960-70's our tribes were very poor. After the legislation, the tribes adopted a slogan in those early years: “If you are Sovereign, Act Sovereign.”

There are success stories with which you might be familiar. Three of these would be those of the Mashantucket Pequet Tribe, the Mohegan Tribe of Connecticut, and the Mississippi Band of Choctaws.

Today, these three tribes are economic leaders within their respective states and respectively join the largest of employers on the area, having hundreds of employees.

The Mashantucket Pequet Tribe owns and manages the largest casino complex in the world--and they were only recognized by the United States in 1982. The Mashantucket Pequet and Mohegan Tribes by agreement give the State of Connecticut well over \$100 million a year. I would note that Connecticut has not had a financial deficit since this relationship began.

These examples, however, do not reflect the overall conditions of tribes in the United States as these are the exceptional cases. Much more needs to be done, and the tribes, working in partnership with the United States, are solving and have solved many, many issues.

The relationship between the United States Government and the tribes is now one of government to government. Self-determination works for the tribes and has helped the tribes and the United States overcome many obstacles. A commitment of trust is required on both sides for a full appreciation of the benefits found in working together.

I would suggest that the Indigenous Peoples' representatives meet in private with the representatives of the Native American tribes and ask them to share in their experiences and in what they have learned in establishing their relationship with the U.S. Government, and especially what it actually means to take control over many of the issues we have been discussing here in developing this Declaration.

The States need the Indigenous Peoples and the Indigenous Peoples need the States. Yes, we truly need each other, and, as trust grows, both will profit enormously in many areas--human, economic, social, health, education, etc.

By the way, I live in Maine on the Penobscot Reservation, which consists of about 200 islands located on the Penobscot River; we also have over 100,000 acres on the mainland. All of our lands and waters are controlled by the tribe and protected by the United States Government for our use and benefit.