COMMISSION ON HUMAN RIGHTS
Fifty-ninth session
Item 15 of the agenda

INDIGENOUS ISSUES

Written statement* submitted by Society for Threatened Peoples, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[5 February 2003]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.03-12104
Indigenous Peoples are calling for a broader representation in the United Nations

The Permanent Forum on Indigenous Issues (PFII), a subsidiary organ of the United Nations Economic and Social Council, had its first meeting May 13 – 24, 2002 in New York. The PFII integrates indigenous peoples and their representatives into the structure of the United Nations. It marks the first time that representatives of states and non-state actors have been accorded parity in a permanent representative body within the United Nations. The establishment of PFII is a significant milestone in the decades-long struggle of indigenous peoples to regain standing within the global community. We are welcoming the clearly improved positioning of PFII within the structures of the hierarchy of the United Nations, leading to a stronger embodiment of indigenous concerns.

However, we are very much concerned that several states have misunderstood the purpose of PFII advocating that PFII has been instituted as a replacement of the United Nations Working Group on Indigenous Populations (UNWGIP). The idea to establish a PFII was conceived and brought forward by the UNWGIP and was always considered to be a complimentary institution aside the Special Rapporteur and the UNWGIP. The UNWGIP over the past 20 years has served as the focal point within the United Nations for the promotion and protection of indigenous peoples rights. The UNWGIP has innovated and supported a range of initiatives and activities: On one hand it had registered and documented the actual developments regarding indigenous rights situations. On the other hand, which has been of much greater significance, the UNWGIP has been mandated to develop standards to establish legal norms for the protection of indigenous peoples. The UNWGIP constitutes the only platform for indigenous peoples which is in a direct relationship with the United Nations Human Rights Commission and can develop international legal standards for successive normative findings. The contribution of indigenous voices within this process has been an existential base element since the existence of UNWGIP and allows for a democratic and by all participants valued work climate.

In contrast the PFII is commissioned with entirely different tasks. It is a platform for indigenous affairs and as such should coordinate a broadest possible range of subjects, primarily including ecology, health and economy in regard to indigenous peoples. The PFII as established does not meet the entirety of aspirations of indigenous peoples, either with respect to its name (once again the term “indigenous peoples has been avoided), its structure (The equal match-up between states and indigenous representatives has been criticised as ignoring the power differential between the two groups), or with respect to its mandate (the advisory, educational and recommendatory functions outlined in the in the Resolution 2000/22 establishing PFII, will have to be interpreted broadly to respond to indigenous peoples’ concerns.

As inherent part of the same process to safeguard indigenous peoples’ rights the Open Ended Working Group on the Draft Declaration (WGDD) on the Rights of Indigenous Peoples was established under the United Nations Commission on Human Rights (UNCHR) resolution 1995/32. The WGDD was set up “as a matter of priority” to complete the adoption of the Draft Declaration within the International Decade of the World’s Indigenous People, which will end in 2004.
The Draft Declaration was agreed upon by the UNWGIP in 1993 and submitted to the Sub-Commission on the Prevention of Discrimination and Protection of Minorities (now the Sub-Commission on the Promotion and Protection of Human Rights), which adopted the Draft Declaration and submitted it for consideration of the UNCHR in 1994. The 9 sections cover a wide range of rights: (1) rights of self-determination, participation in the life of the State, nationality and freedom from discrimination; (2) threats to the survival of indigenous peoples as distinct peoples; (3) the spiritual, linguistic and cultural identity of indigenous peoples; (4) education, information and labour rights; (5) participatory rights, development and other economic and social rights; (6) land and resource rights; (7) the exercise of self-determination, indigenous institutions; (8) the effective implementation of the Declaration and (9) general concluding provisions.

We are very concerned, that several states might misuse the principle of consent to obstruct the whole process. Since the establishment of the WGDD in 1995 only two of the 45 articles of the Draft Declaration have been adopted. Some of the nation states bring forward the argument that indigenous peoples’ self-determination would threaten their sovereignty or violate their constitution. Namely Australia is obstructing the process by claiming that to agree to the term “self-determination” would violate Australia’s constitution.

However, self-determination or autonomy does not necessarily entail the right to secession. We are convinced that indigenous peoples do not intend to destroy the states whose borders they share. Furthermore, the nation states should stick by their commitment to a new partnership with indigenous peoples as it was proclaimed in 1994 at the beginning of the International Decade. Therefore, nation states should be more flexible in finding solutions in accordance with indigenous peoples’ needs and wishes. The same is true regarding other controversial issues like collective rights of indigenous peoples, land rights and rights over natural resources.

Moreover, unless the WGDD makes fast progress, apart from the International Decade coming to an end in 2004, it will be affected by UNCHR decision 2000/109 on “Enhancing effectiveness of the mechanisms of the Commission on Human Rights”. The UNCHR decision 2000/109 on time limits for standard-setting says i. a. that in most cases the established timeframe should not exceed five years. If, by the end of this time-frame, the working group has not been able to achieve the desired result, the Commission is entitled to consider whether to exceed the mandate and if so under what conditions.

The Society for Threatened Peoples calls on the Commission to:
- to support the demands of indigenous peoples to insist upon continuation of the UNWGIP in addition to the PFII and the Special Rapporteur.
- to appeal strongly to all members of the WGDD and in particular to the nation states representatives to show more flexibility and agree upon a bipartisan Draft Declaration until the end of the International Decade in 2004.