

Aotearoa Indigenous Rights Trust

Date

Embassies in New Zealand and Foreign Affairs Departments Overseas Including the Pacific

Dear [name of the Head of the Department/Embassy]

UNIVERSAL DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

1. Introduction

We, on behalf of representatives of Maori (the indigenous peoples of Aotearoa/New Zealand) groups and individuals, seek your support to prevent New Zealand, Australia, Canada, the United States and the Russian Federation (CANZUS and RF) from amending the UN Human Rights Council adopted text of the Declaration on the Rights of Indigenous Peoples (the HRC Declaration) before it is voted on by the UN General Assembly in 2006.

2. CANZUS and RF Position

New Zealand, coupled with the United States, Australia and the Russian Federation, has consistently stated its opposition to both the text of the declaration as approved by the Sub-Commission on the Protection and Promotion of Human Rights in 1994 (Sub-Commission Text) and the HRC Declaration, including in May 2006. More recently, Canada has joined New Zealand and these other states to reject the HRC Declaration, which has been a dramatic change in position. Canada, like the Russian Federation, forced a vote on the Declaration in the Human Rights Council, and then voted against it. Given CANZUS and RF objections to the HRC Declaration, we fear that they will attempt to make amendments to it before it is voted on in the General Assembly.

3. Reasons to Prevent Amendments of the HRC Declaration

Most importantly, CANZUS and the RF seek to weaken the HRC Declaration protections of indigenous peoples' rights.

The HRC Declaration has the support of the vast majority of indigenous peoples who participate in the UN, and states.

Indigenous peoples who support the HRC Declaration have stated that the HRC Declaration text is the absolute minimum they will accept and that they will withdraw their support for the HRC Declaration if it is weakened to accommodate CANZUS and the RF. A declaration on the rights of indigenous peoples without indigenous peoples' support will lack legitimacy. Also, consensus on the text of the Declaration will not be achieved through further amendment, which is reflected in the 20 years of negotiation that led to the HRC Declaration.

New Zealand's concerns about the HRC Declaration also lack legitimacy because of New Zealand's refusal to consult with Maori on the Declaration for the last 5 years.

The impetus for CANZUS and RF amendments can be questioned as Australia, New Zealand and the United States have all been found to racially discriminate against indigenous peoples by the UN Committee on the Elimination of Racial Discrimination in the past seven years.

CANZUS and RF concerns with the HRC Declaration text are unwarranted. They appear to include concerns about states' territorial integrity, ambiguity, threats to non-indigenous peoples' rights, impractical land rights articles and process. We address each here.

Self-determination

The HRC Declaration includes an indigenous peoples' right to self-determination in article 3. This article does not entail any greater threat to states' territorial integrity than exists already under international law, for the following reasons:

- Under article 45 of the HRC Declaration, it is subject to the UN Charter. The UN Charter guarantees states' territorial integrity.
- As a declaration, the HRC Declaration will be subject to binding international law such as states' right to territorial integrity. Existing international law indicates that the right to self-determination only gives rise to the right to secede where:
 - a colonial government governs a nation from outside the nation's territory;
 - a peoples is subject to "alien subjugation, domination and exploitation"; or
 - a people' separates from their parent state with its acquiescence or because the parent state disintegrates.

Further, the UN Declaration on Friendly Relations, considered customary international law, guarantees territories' territorial integrity unless the government does not represent the people belonging to the territory equally.

- New article 4 of the HRC Declaration explicitly states that indigenous peoples' have the right to autonomy and self-government "in exercising their right to self-determination".
- The HRC Declaration does not guarantee indigenous peoples anything new. The language is the same as that in article one of the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights. The UN Human Rights Committee has confirmed that indigenous peoples have the right to self-determination under the ICCPR.
- Indigenous peoples fall into the ordinary meaning of "peoples", an interpretation required by the Vienna Convention on the Law of Treaties.

- It is discriminatory to distinguish indigenous peoples from other peoples who have the right to self-determination.

Ambiguity

CANZUS and RF overstate the level of ambiguity. To the extent that there is ambiguity, it should be noted that: ambiguity is common in all law, domestic and international; is necessary where an instrument is to apply to all states; allows greater room for state-centric interpretation; and can be resolved by institutions with the authority to interpret the law.

Threats to non-indigenous peoples' rights

CANZUS and the RF, and especially New Zealand, have implied that the HRC Declaration threatens non-indigenous rights. It does not. The HRC Declaration will be subject to binding international law that clearly protects the rights of all individuals, such as the ICCPR. In addition, article 45 of the Declaration sets out circumstances when states may limit the HRC Declaration rights and freedoms.

Ambitious land rights provisions

The HRC Declaration's land rights do not, as CANZUS and RF states seem to suggest, provide indigenous peoples with a right to all their traditionally owned and used lands. In fact, article 27, which deals with redress, implicitly legitimises indigenous peoples' loss of their lands. Article 26 does not provide indigenous peoples with a clear right to recognition of their ownership of lands they once possessed. In any event, non-indigenous property rights are protected in instruments now considered customary international law, such as the Universal Declaration on Human Rights.

Process

The HRC Declaration text was not examined in the working group established to consider the Declaration (WG DRIP) before the HRC met in June 2006 because the WG DRIP's mandate had expired. However, all the text in the HRC Declaration emanates from WG DRIP and was debated there over, at least, the past five years, including by CANZUS and RF states, who all contributed to that process. It reflects a compromise between amendments suggested by those states and other states, and indigenous peoples' representatives.

4. The Authors

The Aotearoa Indigenous Rights Trust (AIR Trust) is a non-governmental organisation made up of Maori individuals who have been involved in UN negotiations on the Declaration since 1998, in the hope of advancing indigenous peoples' rights internationally. It also endeavours to disseminate information about United Nations' institutions and processes that impact on indigenous peoples, and especially Maori.

This letter is supported by other Maori and non-Maori organisations, including [...]

5. AIR Trust Position on the Declaration

AIR Trust has always supported the Sub-Commission Text, not least because that text had the support of widely representative Maori organisations that participated in the drafting of the declaration. AIR Trust continues to have some concerns with the content of the text of the Declaration approved by the Human Rights Council in June 2006, as it is weaker than the Sub-Commission Text.

However, as stated above, the vast majority of indigenous peoples' representatives participating in the UN, and states, support the HRC Declaration as the absolute minimum set of guarantees.

Should you require any further information, or verification of any of the material covered in this letter, please do not hesitate to contact AIR Trust at airtrust@paradise.net.nz.

Yours sincerely

Tracey Whare
Trustee

On Behalf of:

[List supporting organisations]

CC:

**Rt Hon Winston Peters
New Zealand Ministry of Foreign Affairs and Trade**