

22nd Session of the United Nations Working Group on Indigenous Populations
Geneva, 19-23 July 2004

Agenda Item 4(b): Indigenous Peoples and Conflict Resolution

**Resolving Conflicts Involving Indigenous Peoples:
Lessons From the Search for “Indigenous Justice” in Canada**

A statement by
Ted Palys

Chair Miguel Alfonso Martinez,
Elders,
Members of the Working Group,
and Indigenous Delegates:

I would like to begin by first congratulating Professor Miguel Alfonso Martinez on his election as Chair of the Working Group and for his thoughtful and well-considered background/discussion paper on the theme of “Indigenous Peoples and Conflict Resolution.” I have no disagreements with his paper and intend my comments only as a supplement to that excellent document.

I should say that I am a Professor in the School of Criminology at Simon Fraser University in Vancouver, Canada, and that I make my comments on the basis of more than a decade of working with Indigenous communities and peoples in Canada who seek to exercise their rights to self-determination in the area of establishing their own justice systems.

In that regard, there are two major points I want to make in the short time available to me today.

1. We have much to learn from Indigenous Processes of Conflict Resolution

First is that, in addition to the power and authority Indigenous processes bring to Indigenous communities in dealing with their own conflicts, we also should not overlook them when we consider broader processes of conflict resolution that might be generated within nation states and internationally to resolve conflicts between Indigenous and non-Indigenous peoples. There is much to be learned and much that can be achieved through

processes that emphasize taking responsibility and the restoration of balance and harmony in relationships.

2. Serious Commitment to the Rights of Indigenous Peoples is Reflected in the Creation of Permanent Structures that Embody Indigenous Representation, Participation and Self-Determination

I also wanted to comment on nation states' governments' roles and responsibilities in recognizing Indigenous Peoples' rights to develop their own justice systems. We have heard from the Government of Canada twice at these meetings and heard lists of programmes and special events they sponsor in relation to Canada's Indigenous peoples. These are all very nice – and they exist in the justice area as well – but it also should be said that these are often the major *obstacle* to realizing Indigenous rights recognized in the draft *Declaration on the Rights of Indigenous Peoples*.

In the justice area, for example, Article 33 of the draft *Declaration* asserts that, “Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive juridical customs, traditions, procedures and practices, in accordance with internationally recognized human rights standards.” And yet, after 15 years of supposedly supporting “Aboriginal justice” through programme initiatives and special events, the federal government still holds all the money, still sets all the priorities, and still effectively tells Canada's Indigenous peoples what their justice systems can look like. Any funds that do come are “soft” funds that may or may not be there next year. No mainstream system can develop with such uncertainty. How can Indigenous justice systems be expected to do so? And how can it be “Indigenous justice” without Indigenous direction and control?

The United Nations system is by no means perfect, but it has created institutional structures such as the Working Group on Indigenous Populations; during the first Decade of Indigenous Peoples has created new structures such as the Permanent Forum and the Office of the Special Rapporteur; and in the future should be creating *more*, not fewer, of these. Canada, if its commitment to Indigenous peoples is real and long-term, should start negotiating with Indigenous organizations to do the same.

Thank you.

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