



Collective Pacific Intervention On The Failure of the UN System to Decolonize the Non-Self Governing Territories & Violations of the Right of Self-Determination



Permanent Forum on Indigenous Issues

Fourteenth session

New York, 20 April-1 May 2015

April 21, 2015

Agenda Item 4

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Pacific Caucus

Supported By:

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Association of Social Workers, Guam Chapter; GALA, Inc.,Guam; Our Islands
are Sacred, Guam; Akali Tange Association, Papua New Guinea; Porgera
Alliance, Papua New Guinea; The Koani Foundation; The Maori Womans
Welfare League- Aotearoa.**

I. Another Decade to Eradicate Colonialism!

On December 10, 2010 the United Nations passed Resolution 65/119 adopting the Third International Decade for the Eradication of Colonialism. In doing so, the United Nations General Assembly once again affirmed its inability to eradicate colonialism and its failure to implement numerous recommendations from United Nations bodies including this Forum, for a concrete plan to implement the Right of Self Determination and delist the UN Non-Self Governing Territories.

In 2008, the indigenous peoples of the Pacific and Caribbean filed a global intervention on the UN Decolonization process. It began by noting that in international law the word "sacred" is used only once. This is in relation to the "sacred trust obligation" which Administering States have to the "inhabitants of the (non-self-governing) territories" under Article 73 of the United Nations Charter. This "sacred obligation" is owed to millions of indigenous peoples who reside in the Pacific and Caribbean and who, under international law, are unable to realize their right to self-determination and self-governance, and they remain on the United Nations on the list of "non-self governing territories (NSGT)" pursuant to G.A. Resolution 66-1 of 1946.

The Special Committee on Decolonization, which has oversight of the Decolonization process has been unable to implement its decolonization resolutions for the past 21 years and the U.N. System has ignored the directives given to it by UN Member states. A prime example is the refusal to implement the mandated political, education programs for the Territories, and its failure to respond to requests from the CERD for data relating to racism in the territories for 26 consecutive years. During this time, and continuing until the present, the UN General Assembly and its member states have declared not one, but three International Decades to eradicate colonialism with woefully insufficient response from the UN System according to independent analyses.

II. The Evolution of International Human Rights Standards for the Protection of Indigenous Peoples – The Special Situation of the Indigenous Peoples of the Non-Self-Governing Territories.

There is a common misconception that international law relating to the human rights of indigenous peoples evolved because of the Cobo Report and ILO Conventions, and later, the Declaration on the Rights of Indigenous Peoples. This is false. Long before the UN Human Rights Conventions were conceived and came into force, the United Nations had begun to address and examine the right of indigenous peoples residing in colonies, to self-determination.

There is a distinct body of international human rights law that deals with peoples and territories that are not self-governing. These indigenous peoples and their traditional lands, territories and resources, were subjected to imperialism and domination by foreign powers during the colonial period. They were denied the most fundamental of all human rights, the right of Self- Determination. This was justified by the Doctrine of Discovery.

In the early 1950's the United Nations passed several Resolutions referencing rights of indigenous peoples in the Non-self-governing Territories. These resolutions include:

- 1). G.A. Reso. 644 (VII), 10th December 1952, Racial Discrimination in the Non-Self-Governing Territories called upon administering states to abolish discriminatory laws in the territories and to examine any laws which were based on race or religion. Preambular paragraph three states: "Recognizing that there is a fundamental distinction between discriminatory laws and practices, on the one hand, and protective measures designed to safeguard the rights of the **indigenous inhabitants**, on the other hand." This language makes clear that 'special measures' for indigenous peoples were needed to address past discrimination, and that such measures were not considered discriminatory.[see <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/079/87/IMG/NR007987.>]
- 2). G.A. Reso. 752 (VIII) 9 December 1953, Attainment by the Trust Territories of the objective of self-government or independence requested the Trusteeship

Council to commence reporting to the General Assembly on progress made in specific areas by administering states to further the goal of 'self-government'... "in particular measures taken in respect of ... (d) the training and appointment of **indigenous persons** from each Trust Territory for positions of responsibility in the administration". [see <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/086/17/IMG/NR008617>]

3) G.A. Reso. 744 (VIII) 27 November 1953, Association of representatives from Non-Self-Governing Territories in the work of the Committee on Information from the Non-Self-Governing Territories in which the General Assembly 'invited' administering states to include in their delegations to the UN ... "**indigenous representatives** specially qualified to speak on (economic, social and educational policies) these matters as they relate to the Territories". This resolution underscored the importance of real "participatory democracy" in the decolonization process as the General Assembly itself wanted to insure indigenous direct participation in the work of the UN itself. [see <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/086/09/IMG/NR008609>]

These and other early UN resolutions provided a framework for administering States to work with Indigenous Peoples to facilitate their ability to achieve self-governance through the exercise of Self Determination.

From 2002 – 2005 the UNGA passed 19 resolutions directing that specific action be taken to implement decolonization in the territories – these actions were to be taken by UN agencies (UNEP, UNDP, EAD/DPA, Electoral Affairs Division, Dept. of Political Action), the UN Secretary General, the UN Regional Economic Commission, the President of the ECO-SOC, the Chairman of the Special Committee on Decolonization, and Independent Expert and State administering agents. Few of these directives have been implemented to date.

III. THE 2006 IMPLEMENTATION PLAN:

In 2006 the General Assembly adopted the **Plan of Implementation** (POI) – [A/60/853-E/2006/75, 17 May 2006], to endorse an implementation strategy in 8 areas – Information, Participation, Analysis of Political and Constitutional Arrangements, Missions, Protections and Conservation as well as Ownership and Control of natural Resources, Educational Advancement, Development of Self-Government and support for NSGT's from the UN – since 2006, no action has been taken to implement the POI, and it is not referenced in the Decolonization discourse despite its approval by the General Assembly,

The POI was unique in that it paired the recommendations with those best suited to undertake the actions. These included specific U.N. departments and agencies, the U.N. Secretariat, and the administering powers. The POI also recommended the introduction of 'special mechanisms' through the use of an Independent Expert to undertake research and analysis that had been mandated in the first and second international decades, but not undertaken. The POI was not undertaken because it

was not included in the Decolonization method of work and **there was no money in the UN budget for “Special Mechanisms”**.

The UN Permanent Forum on Indigenous Issues has addressed this matter before. We direct the Forums attention to the third Forum report to the ECO-SOC contained in document E/C.19/2004/23, E/2004/43. Recommendation number 54 (pg. 17) states:

“The Forum requests the Special Rapporteur on the human rights and fundamental freedoms of indigenous peoples undertake a study on the United Nations decolonization process and the Special Committee on Decolonization to assess its historical and current impact on the human rights of indigenous peoples of the non-self-governing territories. Furthermore, the Forum requests the Secretary General to undertake a mid-decade review of the Second Decade on the Eradication of Colonialism to determine whether substantial progress has been made in achieving the goals of the Second Decade and to identify proposals for addressing obstacles to achieving the goals of the Second Decade.”

Unfortunately, the recommendations of the UN Permanent Forum were ignored. No report was undertaken by the Special Rapporteur on the Rights of Indigenous Peoples nor was any mid-decade review undertaken by the Secretary General. It is now time to undertake a mid-decade review of the third decade.

Human Rights Experts and Secretary General call for new approach:

At the opening the 2013 substantive session of the Special Committee on Decolonization, Secretary-General Ban Ki-moon today called on that body to devise “**fresh and creative**” approaches in mobilizing the political will needed to eradicate colonialism, saying it had no place in the modern world.”

Pursuant to a decision of the United Nations Permanent Forum on Indigenous Issues at its eleventh session (see E/2012/43 , para. 112), Edward John, a member of the Permanent Forum, undertook a study of the impacts of the Doctrine of Discovery on indigenous peoples, including mechanisms, processes and instruments of redress, with reference to the Declaration, and particularly to articles 26 to 28, 32 and 40. The outcome of the study was submitted to the Permanent Forum at its thirteenth session. (E/C.19/2014/3, 20 Feb 2014).

The report identified the ongoing human rights violations suffered by Indigenous Peoples as the result of the historical and continuing application of the Doctrine of Discovery. It called for redress through new process for ‘Decolonization’...

“34. Processes and mechanisms of redress, as well as independent oversight, are required at international, regional and domestic levels. Decolonization processes must be devised in conjunction with indigenous peoples concerned and compatible with their perspectives and approaches. Such

processes must be fair, impartial, open and transparent, and be consistent with the Declaration and other international human rights standards.”

The UN Independent Expert on the promotion of a democratic and equitable international order relied in part on the PFII study to justify his latest report on the right of self-determination . See General Assembly, Promotion of a democratic and equitable international order: Note by the Secretary-General, interim report of the Independent Expert Alfred-Maurice de Zayas, UN Doc. A/69/272 (7 August 2014), para. 2, where de Zayas: acknowledges the study on the impacts of the Doctrine of Discovery on indigenous peoples, including mechanisms, processes and instruments of redress, submitted to the Permanent Forum on Indigenous Issues, in which special rapporteurs are encouraged to play a role in establishing relevant standards (E/C.19/2014/3, para. 36).

At para. 58, de Zayas emphasized: "It is time to face 'historical inequities' and abandon the culture of silence." He relies on the Permanent Forum study in referring to the "racist and factually inapplicable doctrine of discovery". de Zayas then states:

“As the Permanent Forum study observes: “The Doctrine of Discovery is significant globally not only for abuses in the past, but also for its ongoing far-reaching consequences. Such colonial doctrines must not prevail in practice over human rights, democracy and the rule of law.....

Self-determination is an expression of the individual and collective right to democracy, as democracy is an expression of the individual and collective right of self-determination. Both have national and international dimensions. The hallmark of self-determination must be public participation in decision-making and control over resources. In most cases this can be achieved within existing State entities, inter alia through federalism and other models of autonomy. (ibid.para. 32).

“The United Nations Declaration on the Rights of Indigenous Peoples constitutes a milestone in the struggle of indigenous peoples for self-determination and provides an important catalogue of rights and entitlements that should guide both Governments and the indigenous peoples themselves.”(ibid. para. 60).

“The right [of self-determination] is not extinguished with lapse of time because, just as the rights to life, freedom and identity, it is too important to be waived.”(para. 66)

Conclusion:

Since the last global intervention was filed with the Forum on this topic in 2008, many Experts in the UN system have addressed the critical need to move forward to address and remedy the legacy of colonization. It is evident that the Fourth

Committee is unable or unwilling to address the critical human rights issues relating to the right of self-determination of peoples in the Non-Self-Governing Territories and that this matter must be addressed by the Third Committee, the Forum and other Experts within the UN Human Rights System.

The Pacific Signatories to this Intervention recommend the following to the Forum Experts:

1. That the Forum recommend the ECO-SOC implement the relevant provisions of the Plan of Implementation (POI) adopted by the General Assembly– [A/60/853-E/2006/75, 17 May 2006], and ensure the necessary resources are made available to carry out the Plan.
2. That the Forum recommend the appointment of a Special Rapporteur on the Human Rights of the Peoples of the Non Self- Governing Territories to oversee and report to the United Nations on the status of human rights in the Non-Self-Governing Territories and the implementation of the POI.
3. That the Forum undertake a Mid-Decade review of the Third International Decade for the Eradication of Colonialism with the aim of identifying impediments to the fulfillment of the mandate, and proposing solutions to the Decolonization crisis experienced by Indigenous Peoples in the Non Self-Governing Territories.

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Submitted: April 21st. 2015 New York

