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UNITED NATIONS  
WORKING GROUP ON INDIGENOUS POPULATIONS  
FIFTH SESSION, AUGUST 1987  
GENEVA

REVIEW OF DEVELOPMENTS PERTAINING TO THE PROMOTION AND PROTECTION  
OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF INDIGENOUS POPULATIONS

OBSERVER DELEGATION OF CANADA  
STATEMENT BY MR. SCOTT SERSON, HEAD OF DELEGATION  
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WGIP 87 GOV/NAM.CAN/4

Madame Chairman,

I appreciate this opportunity to offer some opening remarks on behalf of the observer delegation from the Government of Canada.

I would first like to congratulate you, Madame Chairman, and the other members of the Working Group, for the valuable work which you have performed to date in the formulation of draft principles relating to the rights of indigenous populations. Canada supports this process and will continue to assist the Working Group in its efforts both through review of pertinent developments in Canada and the provision of commentary on draft principles which are formulated from time to time by the Working Group. As you are aware, Canada has recently provided the Secretariat with some comments on the 7 draft principles developed at your fourth session in 1985. We sincerely hope that you will find these observations useful in both the current and future deliberations.

While Canada supports and encourages the efforts of this body in the development of a draft declaration on the rights of indigenous populations, I would emphasize that this support is largely predicated on certain fundamental assumptions. The first is that any eventual declaration must apply to all indigenous populations no matter where they happen to be located. The impact of a declaration which, through its drafting excludes, or permits the exclusion of, major portions of the world's indigenous populations will be seriously diminished.

Second, the principles developed must address the most pressing needs of the indigenous populations as a priority. In this respect enjoyment of human rights and freedoms, such as freedom from discrimination and the right to life and security of the person are of paramount concern. Canada notes with satisfaction that the Working Group has attempted to address these issues in the draft principles developed at its fourth session in 1985.

As a third consideration, it must be borne in mind that, in order to be effective, any declaration on the rights of indigenous populations must, in the end result, be acceptable to governments. While certain organizations may wish to propose principles which they find attractive for their own political or other reasons, these will not be helpful if, in the final analysis, they are not realistically capable of gaining general acceptance by member states. In this respect, the key to formulation of principles will be the ability to strike a reasonable balance between the rights of indigenous populations which are in need of protection and the interests of the larger society in which these populations are located.

Having made these general remarks, I would now like to turn to a review of developments in Canada since the fourth session. While there have been many developments which have occurred in Canada since that time, perhaps the most significant to the deliberations of this body was the First Ministers' Conference on Aboriginal Constitutional Matters which was held on March 26 and 27, 1987 and which you, Madame Chairman, attended in your personal capacity. This was the last in a constitutionally mandated series of three conferences held in order to determine whether agreement could be reached on the entrenchment, in Canada's Constitution, of additional rights for aboriginal peoples\* of Canada. The existing aboriginal and treaty rights of the aboriginal people are currently protected in our Constitution.

In many ways this exercise of constitutional deliberations with our aboriginal peoples directly parallels the task of this Working Group. We

\* It should be noted that references to Canada's aboriginal "peoples" are consistent with the terminology of the Canadian Constitution with respect to Canada's domestic situation. They should not be interpreted as supportive of the notion that Canada's aboriginal groups are "peoples" in the sense of having the right to self-determination under international law. I will elaborate further on this in a subsequent intervention.

attempted, through discussions with representatives of Canada's aboriginal peoples, as well as provincial and territorial leaders, to develop draft standards and rights which we could eventually embody in our fundamental law. As in the case of this Working Group, we attempted to formulate principles and rights which could accommodate the diverse needs, cultures and geographic circumstances of Canada's many different indigenous groups. This is no easy task at the national level and doubtlessly presents an even greater challenge at the international level.

In the Canadian situation, the concentration at the last two constitutional conferences was on the issue of self-government for our aboriginal peoples. Extensive debate took place in numerous meetings between the parties and many different approaches were explored. At the 1987 conference, the Government of Canada put forward a proposal for a constitutional amendment which would have recognized a right of the aboriginal peoples of Canada to self-government within the context of the Canadian federation. It would have further provided that the jurisdictions, legislative powers, proprietary and other rights of aboriginal governments would be contained in agreements which the federal and provincial governments would be obligated to negotiate with representatives of aboriginal communities or groups. The rights of the aboriginal people contained in such agreements would have obtained constitutional protection.

Unfortunately, while there was general agreement among governments and aboriginal peoples on the general objective of aboriginal self-government, there was not a sufficient consensus on a constitutional amendment of the nature proposed by the federal government. There are still some fundamental issues which must be resolved before such an agreement is possible.

I must emphasize that the lack of success in achieving agreement on a constitutional amendment at the 1987 conference does not mean that the possibility of constitutional change is foreclosed. The process of constitutional change is slow and deliberate, as is evidenced by the long history of discussions and explanation of options geared toward obtaining a constitutional accommodation for the particular

concerns of the province of Quebec. The frustration which is felt by our aboriginal peoples as a result of not having reached agreement in 5 years of constitutional discussions is understandable. The Prime Minister of Canada, at the close of the Conference, however, indicated his continued commitment to achieving success in the area of aboriginal self-government when he stated:

"One day we shall succeed. If this part of the constitutional process has come to an end, my resolve is undiminished. There shall indeed one day be constitutionally entrenched guarantees of equality and fairness for all aboriginal peoples. If in my judgement a new meeting or conference would be helpful and productive, I shall not hesitate to call one."

In the meantime, the Government of Canada remains committed to achieving the objective of aboriginal self-government within existing constitutional arrangements. We have undertaken a process of community-based self-government negotiations with Indian people which has as an objective:

- the recognition of diverse needs, traditions and cultures of aboriginal peoples;
- the substantive increase of local control and decision-making; and
- increased accountability to the electors of the community rather than to a federal bureaucracy.

In the area of Indian self-government:

An agreement was reached in 1986 with the Sechelt Indian Band for the government of the land which is now held in full ownership by that Band. This resulted in the enactment of the Sechelt Indian Band Self-Government Act by Parliament in October, 1986 and the subsequent enactment by the province of British Columbia, in April 1987, of the Sechelt Indian Government District Enabling Act.

- o Over 40 self-government proposals have been received from other Indian communities in widely varying circumstances and negotiations are underway on 24 of these.

With respect to the Inuit population of the North:

- o The Government of Canada has supported a Constitutional Alliance process which has placed emphasis on the development of public institutions rather than ethnically based self-government. The proposed division the territories would, however, result de facto in the population of the eastern Arctic (Nunavut) being mainly of Inuit origin thus ensuring control over government structures which evolve.

As regards Métis and other off-reserve aboriginal people:

- o A process of trilateral self-government discussions between the federal government, provincial governments, and representatives of these people is now underway in two provinces and may soon commence in others.
- o The province of Alberta stated its commitment to revision of the Métis Betterment Act which currently affects eight Métis communities in the northern part of that province.

Another significant development occurred in December 1986 with the announcement of a revision of the federal government policy on comprehensive land claims. Since 1973, a process has been established for the negotiation of settlements with aboriginal groups where rights of traditional use and occupancy had been neither extinguished by treaty nor superseded by law. This policy had not been reviewed since 1981 and was the subject of criticism by aboriginal groups and others for a number of reasons. A major review was undertaken, starting in 1985, and a number of revisions were made. This new policy:

- clarifies that aboriginal rights to be negotiated are limited to land-related rights; any other rights that may exist remain unaffected;

- establishes new approaches to the resolution of claims to aboriginal title; and
- provides scope for the negotiation with aboriginal groups of self-government, resource revenue-sharing, joint environmental management regimes and other matters. A much broader range of self-government matters in claims negotiations is now possible.

Six comprehensive land claims are currently being negotiated. Under the specific land claims policy which deals with claims to land based on factors other than aboriginal title, nine settlements have been reached in the last two years. These include several major settlements, such as that reached with the Cree Band of Fort Chipewyan in northern Alberta. Outstanding treaty land entitlement was at issue in this case. The Band received \$26 million in cash compensation as well as 12,275 acres of reserve land.

With respect to Indian health care and housing, the situation is unfortunately not as positive although measures are being taken which we hope will help to remedy existing problems.

- o Despite improvements in the health care statistics relating to Indian people over the past 40 years, the health of Indian people remains unacceptably poor when compared with other Canadians. The Government of Canada is currently exploring, with representatives of Indian bands, a strategy of health promotion and disease prevention which would respond to the social, economic and environmental realities of Indian communities and give these communities greater control over the planning and delivery of relevant health programs.
- o The Government of Canada remains fully committed to assisting Indian people to address their housing needs. This it does through a variety of methods such as subsidies, grants and contributions, and loan guarantees.
- o While the Indian housing situation has also improved measurably over the past years, however, a considerable backlog of housing construction

remains. The Canadian government is currently discussing with Indian leaders the possibility of conducting a review of Indian housing issues.

As a final note on developments in Canada, it will be recalled that, at the fourth session of this Working Group in 1985, the Canadian delegation reported on amendments to the Indian Act which were made in June of that year to resolve the question of sexual discrimination in the membership provisions of that Act. These amendments provided, among other things, a process by which persons having suffered such discrimination could regain Indian status and band membership, as well as an opportunity for Indian bands to establish their own membership codes.

Under this reinstatement process some 45,000 applications, representing 90,000 people had been received. So far, some 27,800 people have been registered as status Indians. Documentation regarding membership codes has been received from approximately 250 bands. These are currently being processed and actual transfer of membership control has already been made to certain bands. Over 400 bands have received funding for membership code development.

This concludes our review of developments. I would like to thank the members of the Working Group for permitting us this opportunity to address you. With your indulgence, I would like to make a further intervention at a later point in the discussion on standard-setting.

Thank you, Madame Chairman.