



UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL

E/CN.4/Sub.2/AC.4/1983/5/Add.2
29 July 1983

Original: ENGLISH

WGIP 83/UNI/ 3

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous populations
Second session
Items 5 and 6 of the provisional agenda

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

CONSIDERATION OF THE EVOLUTION OF STANDARDS CONCERNING THE RIGHTS
OF INDIGENOUS POPULATIONS

Information received from non-governmental organizations

Addendum

This document contains the information received from the International Indian
Treaty Council. 1/

1/ A copy of the full text of this paper is available for consultation at the
Secretariat.

INTERNATIONAL INDIAN TREATY COUNCIL

[Original: English]

[22 July 1983]

Draft principles for guiding deliberations of the Working Group

Guided by Article 1, paragraphs 2 and 3, Article 55, and the spirit of the Charter of the United Nations, as well as the Universal Declaration of Human Rights,

Bearing in mind General Assembly resolutions 260 A (III), adopting the "Convention on the Prevention and Punishment of the Crime of Genocide"; 2106 A (XX), adopting the "International Convention on the Elimination of All Forms of Racial Discrimination"; 2200 A (XXI), adopting the "International Covenant on Economic, Social and Cultural Rights", the "International Covenant on Civil and Political Rights", and the Optional Protocol to the latter Covenant; and 3201 (S-VI), adopting the "Declaration on the Establishment of a New International Economic Order",

Taking into account General Assembly resolution 275 (III), which recognizes the social problems of the indigenous populations of the Americas; and resolutions 37/46, 37/183, 37/184, calling for the protection of the rights of indigenous populations in general, with special reference to Chile and Guatemala,

Following General Assembly resolution 1803 (XVII), which declares the right of peoples and nations to permanent sovereignty over their natural resources,

Recalling Economic and Social Council resolution 1982/34, which declares that the Working Group on Indigenous Populations shall review developments pertaining to the human rights of indigenous peoples and develop standards to govern the rights of indigenous peoples,

Taking note of ILO Convention No. 107, with special reference to article 11, and Recommendation No. 104 of the ILO,

Inspired by the language and spirit of the "Athens Appeal", the "San José Declaration" and the "Declaration on Race and Racial Prejudice" of the United Nations Educational, Scientific and Cultural Organization, as well as the declarations, recommendations and the Programme of Action of the World Conference to Combat Racism and Racial Discrimination,

Having studied the work of the Special Rapporteur and his staff, appointed by the Sub-Commission to prepare a "Study of the Problem of Discrimination Against Indigenous Populations

Bearing in mind the resolutions and the "Declaration of Principles for the Defense of the Indigenous Nations and Peoples of the Western Hemisphere" from the International NGO Conference on Discrimination Against Indigenous Populations in the Americas, and the resolutions of the International NGO Conference on Indigenous Peoples and the Land,

Taking note of the "Conference on Security and Co-operation in Europe: Final Act", otherwise known as the Helsinki Declaration of 1 August 1975, with special reference to section VIII on the Equal Rights and Self-Determination of Peoples,

Aware of the Vienna Convention on the Law of Treaties,

Inspired by the "Universal Declaration of the Rights of Peoples" set forth at the Algiers Conference of 4 July 1976, as well as the "Declaration of Barbados I" and the "Declaration of Barbados II", which exemplify the need and growing desire for a reassessment of the relationship between indigenous and non-indigenous society and for the active participation of indigenous peoples in regaining control of their own destinies and assuming their rightful place as equal participants in the international order,

Taking note of "The Stockholm Declaration on the Human Environment" and its accompanying "Declaration of Principles",

Respectful of the fact that many indigenous cultures hold land and the natural environment in great reverence, include aspects of the natural environment as integral parts of their spiritual practices, base their economic organization upon the principle of co-operation with the environment, and deplore all destructive and wasteful exploitation of land and the natural environment,

Having heard from representatives of indigenous peoples of the deplorable political, economic and social situations to which indigenous peoples throughout the world are subjected,

Mindful of its responsibility to not only review developments but also to establish standards relating to the rights of indigenous peoples,

Decides upon the following basic principles to guide, for the present time, the Working Group's review of developments relating to the rights of indigenous people and its deliberations over the evolution of standards concerning the rights of indigenous peoples:

I. SUBSTANTIVE STANDARDS TO GUIDE THE WORKING GROUP

1. It is widely recognized that certain fundamental ideological, economic, social and cultural differences exist between indigenous nations and peoples and Member States of the United Nations. Furthermore, the Member States of the United Nations have, to the present, directed the development of international instruments and law, with no input from indigenous peoples. As a result, existing international instruments alone do not constitute a satisfactory basis for the evolution of substantive standards concerning the rights of indigenous populations. Thus, the Working Group, upon examination of existing instruments in the field of human rights to determine their relevance to indigenous populations and taking care to avoid conflict or duplication of existing standards, must elaborate new international instruments and standards relating specifically to indigenous nations and peoples.

2. All standards elaborated by the Working Group should be based upon consultation with, advice from and approval by indigenous peoples and their representative organizations.

II. SELF-DETERMINATION

1. Indigenous populations are subject to an economic and/or political and/or social domination which is alien and colonial or neo-colonial in nature.

2. Indigenous populations are composed of nations and peoples, which are collective entities entitled to and requiring self-determination. The Working Group should, therefore, develop a definition of the ultimate goals of self-determination, appropriate to indigenous populations, and procedures for achieving those goals.

3. Indigenous nations and peoples who so desire should be granted the full rights and obligations of external self-determination.

4. Indigenous nations and peoples who wish to limit themselves to the exercise of internal self-determination only should be granted the freedom to do so. The rights of internal self-determination should include, but not be limited to, the right to:

(a) control their own economies;

(b) freely pursue their economic, social and cultural development in conformity with their traditional customs and social mores;

(c) engage in foreign relations and trade if they so desire;

(d) restore, practice and educate their children to their cultures, languages, traditions and way of life;

(e) and the right to the ownership of land as the territorial base for the existence of indigenous populations as such.

5. In order to ensure that the self-government of indigenous populations is fully realized and to promote their release from alien and colonial or neo-colonial domination, the representatives and systems of governance, whether electoral, traditional or otherwise, should be those chosen by the members of the respective populations without the participation of or infringement by States, individuals, corporations or other entities.

6. All indigenous nations and peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon principles of full and informed consent, mutual benefit and international law. In no case may any indigenous nation or people be deprived of its own means of subsistence.

7. Alternatively, all indigenous nations and peoples have the right to protect the environmental integrity of their territories by refusing to allow any form of development which, either directly or indirectly, threatens that integrity.

8. No State shall undertake or permit any form of development within the territory inhabited by an indigenous population without the full and informed consent, freely given, of a majority of the inhabitants.

III. ACCORDANCE OF INDEPENDENCE

1. All indigenous nations and peoples shall be accorded such degree of independence, both political and economic, as they desire in accordance with international law.

2. Each indigenous nation and people shall be considered a distinct entity with the power and the right to represent its own interests. The powers and rights of self-representation hold despite the fact that more than one distinct indigenous nation or people may be living within the territory dominated by a single State. By virtue of these powers and rights of self-representation, agreements entered by any indigenous nation or people shall in no way prejudice or otherwise affect the rights and duties of any other indigenous population.

IV. TREATIES AND AGREEMENTS

1. All treaties and other agreements entered into by indigenous nations and peoples, whether entered with States or with other indigenous nations or peoples, and whether denominated as treaties or otherwise, shall be recognized and applied in the same manner and according to the same international laws and principles as the treaties and agreements entered into by other States, in a manner consistent with the Charter of the United Nations.

2. Treaties should be construed as they were understood by the indigenous representatives who participated in their negotiation. Treaties entered between indigenous nations or peoples and States should be liberally interpreted, with ambiguities resolved in favour of the indigenous populations. Furthermore, these treaties should be interpreted in light of the conditions under which they were signed.

3. All rights enumerated within and implied by the terms of this set of principles shall apply with equal force to all indigenous nations and peoples whether or not they have entered into recorded treaties or agreements with any State. Nor shall any indigenous nation or people be deemed to have fewer rights or lesser status for the sole reason that the nation or people has not entered into recorded treaties or agreements with any State.

V. JURISDICTION

1. No State shall assert or claim to exercise any right of jurisdiction over any indigenous nation or people or the territory of such indigenous population unless pursuant to a valid treaty or other agreement freely made with the lawful representatives of the indigenous nation or people concerned. All actions on the part of any State which derogate from the indigenous population's right to exercise self-determination shall be the proper concern of existing international bodies.

2. No State shall claim or retain, by right of discovery or otherwise, the territories of an indigenous nation or people, except such lands as may have been lawfully acquired by valid treaty or other cessation freely made.

VI. NATIONAL AND CULTURAL INTEGRITY

No State shall take or permit any course of conduct with respect to an indigenous nation or people which will directly or indirectly result in the destruction or deterioration of such indigenous nation or people or otherwise threaten the national or cultural integrity of such nation or people, including, but not limited to, the imposition and support of non-indigenous systems of property relations, forms of community organization, and governments.

VII. RELIGIOUS AND SPIRITUAL FREEDOM

1. All indigenous nations and peoples have the right to the free exercise of religious and spiritual beliefs, including the right to manifest these beliefs through teaching, practice, worship and observance.

2. Where the free exercise of religion requires access to areas of land or natural formations, it shall be unlawful for any State to take or permit any action or course of conduct which will directly or indirectly interfere with the continued existence of and access to such areas or formations.

3. No State shall take or permit any action or course of conduct, the intent of which is to introduce non-indigenous religions to indigenous populations through missionary activities.

VIII. CHILD WELFARE

1. All indigenous nations and peoples have the right to raise and educate their children to the skills, ideas, values and beliefs of the respective communities and cultures.

2. Indigenous nations and peoples should have priority jurisdiction over all matters pertaining to the foster care placement, termination of parental rights, and pre-adoptive and adoptive placement of children born to members of their communities.

IX. COMMUNICATION

1. All indigenous nations and peoples have the right to freedom of opinion and expression. This right includes the freedom to hold opinions without interference, the right to seek, receive, and impart information and ideas through any media and regardless of national boundaries and frontiers, and the right to include concepts and ideas deriving from indigenous world views within the international community of ideas.

2. No State shall take or permit any action or course of conduct with respect to indigenous nations or peoples which is intended to, either directly or indirectly, inhibit the free flow of ideas and information among indigenous populations or between indigenous populations and non-indigenous peoples.

X. LAND AND ENVIRONMENT

1. No State shall undertake or permit any action or course of conduct with respect to the territories of an indigenous nation or people which will directly or indirectly result in the destruction or deterioration of an indigenous nation or people through the effects of pollution of earth, air, water, or which in any way depletes, displaces or destroys any natural resource or other resources under the dominion of, or vital to the livelihood of an indigenous population.

2. Indigenous populations are the people of the land. This assertion follows from the fact that the way of life of many indigenous populations is based upon a profound respect for the natural environment, as evidenced by beliefs and practices which hold this sense of respect to be a primary consideration in the determination of the form of ownership and manner of use of the land. Therefore, the preservation of the society and culture of indigenous populations represents a means of protecting and preserving the natural resources of the earth, including the air, water, land, flora and fauna, and those natural ecosystems contained within the territories of the indigenous populations.

3. The viability of the indigenous approach to the use of land and the natural environment is exemplified by the fact that, where they have not been destroyed or grossly altered by conquering peoples, the socio-economic systems of indigenous nations and peoples are among the oldest, that is the most enduring and resilient, social structures to be devised by human kind. Thus, the preservation of the society and culture of indigenous populations provides a means of safeguarding a cultural resource from which other societies and future generations may learn techniques for the rational management of natural resources and for the promotion of a wise, harmonious and enduring relationship between human society and its environment.

XI. INDIGENOUS MEMBERSHIP

No State, through legislation, regulation, or other means, shall take actions that interfere with the sovereign power of an indigenous nation or people to determine its own membership.

XIII. CONCLUSION

All of the rights and obligations declared herein shall be in addition to all rights and obligations existing under international law.

These principles represent certain of the basic rights of indigenous nations and peoples and certain fundamental concepts concerning the way of life of indigenous peoples, which should guide the deliberations of the Working Group.

Invites oral and written communications, particularly from indigenous peoples and their representatives, providing information relating to these principles and concepts and other matters relevant to the purposes of the Working Group.